









# AGE OF CONSENT COMMITTEE

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## EVIDENCE

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1928-1929

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Volume VII

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**Oral Evidence and Written Statements  
of  
Witnesses from Bihar and Orissa, Assam  
and Burma.**



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27	..	Rai Sahib P. N. Chowdhury, B.A., B.L.	M. L. C., President, Municipal Committee, Bassein.	392—393	..
28	..	....	Monywa Municipal Committee.	393	..
29	Dr.	Dr. M. L. Kundu, M.B. (Cal.), F.R.F. P. S. (Glas.), L.M. (Dub.).	Civil Surgeon, Insein	393—394	..
30	..	....	Members of the Insein Municipal Committee.	394	..

**The following persons were invited to give oral evidence but did not appear:—**

**PATNA.**

1. Mahanth Krishna Dayal Gir, Mahanth of Bodh Gaya, Gaya.
2. Mrs. Savitri Rani Sewal, Chapra.
3. Health Officer, Patna.
4. Director of Public Health, Patna.
5. Mr. Nawal Kishore Prasad, Advocate, representing Bihar Provincial Hindu Sabha, Gulab Bagh, Patna.
6. Mrs. N. Senapati, Secretary, Child Welfare Centre, Cuttack.
7. Rai Bahadur Radha Krishna, Chairman, Muzaffarpore Municipality.
8. The Hon'ble Babu Anugrah Narain Sinha, Chairman, District Board, Gaya.
9. Maulvi Mohd. Shafee Saoodi, M.L.A., P. O. Dandanagar, District Muzaffarpore.
10. Mrs. Krishna Kumari Sinha, c/o Thakur Bhola Nath Sinha, Vice-Chairman, District Board, Palamau.
11. Mr. M. Banerjee, Chairman, Sambalpur Municipality, Sambalpur.
12. Hon'ble Mr. Mahindra Prasad, Bank of Bihar Ltd., Chapra.
13. Sir Ali Imam, K.C.I.E., Patna.
14. Mr. B. Das, M.L.A., Cuttack.
15. Mr. Ganesh Prasad Sahu, Banker and Zemindar, Champaran.
16. Bhaiya Raj Kishore Deo, Raiyasut Nagarutari (Palamau).
17. Mrs. S. Rao, Cuttack.
18. Mr. K. Siddeshwar Prasad Sinha, Village Barwan, District Gaya.
19. Pandit I. D. Durga Dutt Shastri, Principal, D. S. Sanskrit College, Muzaffarpore.
20. The Hon'ble Mr. Shah Mohd. Zubair, Fort Monghyr.
21. Babu Shiva Shankar Jha, M.L.C., Wakil, Mudhubani.
22. Miss Ferozuddin, Mrs. Hamid Ali, Mrs. Mazrul Haq.
23. Mrs. R. Deobir Sinha, Secretary, Women Education Association, Muzaffarpore.
24. Maulana Shah Sulaiman Saheb, Phulwari.
25. Syed Hasan Imam, Bar-at-Law, Patna.

**ASSAM.**

**SHILLONG.**

1. Mr. T. R. Phookan, M.L.A., Gauhati.
2. Mr. Sirajuddin Chaudhry, M.L.C., Silchar.
3. Mr. Faiznur Ali, Dibrugarh.
4. Mr. Radha Raman Dutt, Secretary, Bar Association, Silchar.
5. Mr. Brajendra Narain Chaudhry, M.L.C., Sylhet.
6. Mr. Shish Chandra Dutta, M.L.A., Karimganj, District Sylhet.
7. Assistant Director of Public Health, Shillong.
8. His Highness Sri Sri Garamnriya Goswami, Garamur Satra, P. O. Kamalabari.
9. Mr. Basanta Kumar Das, M.L.C., Sylhet.
10. Khan Bahadur Amjad Ali, Public Prosecutor, Sylhet.
11. Hon'ble Maulvi Gulam Mostafa Chaudhry, Zamindar, Bhatipara, Patharia P. O., District Sylhet.
12. Rai Bahadur P. C. Dutt, Advocate, Sylhet.





# THE AGE OF CONSENT COMMITTEE.

## QUESTIONNAIRE.

**NOTE.**—*The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.*

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code ?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law.

3. Are crimes of seduction or rape frequent in your part of the country ? Has the amendment of the law made in 1925 raising the age of consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes ? If not, what measures would you propose to make the law effective ?

4. Has the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13.

If not, what steps would you propose to make it effective ?

5. What is the usual age at which girls attain puberty in your part of the country ? Does this differ in different castes, communities or classes of society ?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty
- (2) soon after puberty
- (3) before the girl completes 13 years.

Do any of these cases come to court ?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction ? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach ?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country ? If so, does it coincide with or is it anterior to the consummation of marriage. Is it performed generally after the attainment of puberty and how soon after it ?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the age of consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

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#### EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketed portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.

#### SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case herein-after excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

#### SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

#### Section 376-A.

376-A. *Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Extracts from the Code of Criminal Procedure 1898, Schedule II.

Of Rape.

XIV of 1860 Section. 1	Offence. 2	Whether the Police may arrest without warrant or not. 3	Whether a summons shall ordinarily issue in the first instance. 4	Whether bailable, or not. 5	Whether compoundable or not. 6	Punishment under the Indian Penal Code. 7	By what court triable. 8
376	<p>Rape— (If the sexual intercourse was by a man with his own wife not being under 12 years of age).</p> <p>If the sexual intercourse was by a man with his own wife being under (12) 13 years of age.</p> <p>In any other case .</p>	<p>(Shall not arrest without warrant.)</p> <p>Shall not arrest without warrant.</p> <p>May arrest without warrant.</p>	<p>(Summons)</p> <p>Summons</p> <p>Warrant</p>	<p>(Bailable)</p> <p>Bailable .</p> <p>Not bailable</p>	<p>(Not compoundable.)</p> <p>Not compoundable.</p> <p>Do.</p>	<p>(Imprisonment of either description for 2 years, or fine, or both.)</p> <p>Transportation for life, or imprisonment of either description for 10 years and fine.</p> <p>Do. . .</p>	<p>(Court of Session, Chief Presidency Magistrate or District Magistrate.)</p> <p>Court of Session.</p> <p>Do.</p>
376-A	<p>Illicit married intercourse by husband with wife not under 13 and under 14 years of age.</p>	<p>Shall not arrest without warrant.</p>	<p>Summons</p>	<p>Bailable .</p>	<p>Not compoundable.</p>	<p>Imprisonment of either description for 2 years, or with fine, or both.</p>	<p>Presidency Magistrate or magistrate of the first class.</p>

## PATNA.

### Oral Evidence of Kumar GANGANAND SINHA, M.L.A.

(Calcutta, 2nd January 1929.)

*Chairman:* What is the age in Bihar and Orissa in the parts in which you live when consummation of marriage takes place? Does it take place soon after puberty without reference to age?

A. It takes place soon after puberty without reference to age. It is just after the appearance of menses.

Q. What is the menstrual age?

A. Between 12 and 14.

Q. Is that with regard to all classes?

A. I belong to the Mythila community which is a rather large community in Bihar. I am talking of that community.

Q. What does that community correspond to in other parts?

A. Brahmins. I am speaking for them. I am not of course authorised by any institution to speak for them.

Q. Is the marriage age increasing now?

A. Not rapidly.

Q. Have you 'Goana' ceremony at all there?

A. Yes. That takes place sometimes in the first year of marriage and sometimes in the 3rd year. It has nothing to do with consummation because the husband may visit his father-in-law's house as many times as he likes between marriage and the 'goana' ceremony.

Q. Has Gaona nothing to do with consummation? Does that mean only sending the girl to the father-in-law's house.

A. Yes.

Q. Do you see any evil consequences of this early consummation and early maternity?

A. Yes, I do.

Q. Even among the Mythila Brahmins?

A. Yes. There is distinct deterioration. Our grandfathers were much more hardy and sturdier than we people and I think our grandsons will be still more feeble and weak.

Q. Don't you think that there is a variety of causes which bring about this result?

A. But this is one of the causes.

Q. Do you think that the health of the girl and the infants is affected?

A. I think so.

Q. Is there any community in Bihar which has necessarily post puberty marriages, after 16 or 17?

A. I can say about the Shudras. Among them there is no consummation till the 'Goana' ceremony takes place and the girl is sent to her father-in-law's house only after that. Even if the husband comes between that period he is not allowed to see the wife.

Q. But does that take beyond a certain age?

A. I have seen Shudra girls going to the father-in-law's house at 15 or 16.

*Q.* That is to say, even after puberty.

*A.* Yes.

*Q.* Is Goana deferred till after puberty?

*A.* Yes.

*Q.* Among those classes which have post-puberty marriages and late consummations and late maternity do you think their health is better as a class than those who have early marriage?

*A.* I am not prepared to say that. They are mainly low class people and their economic condition is not such as to keep them in a fit state of health. They have other disadvantages if not early marriage.

*Q.* Do you find that among the well-to-do classes their progeny is weak and that is the reason why you put it to early consummation and early maternity?

*A.* Yes.

*Q.* Out of the two remedies the Age of Consent and fixing the minimum age of marriage which do you prefer?

*A.* The Age of Consent Law even now exists but in actual practice it is very seldom used.

*Q.* Do you mean it is abortive?

*A.* I don't think it is made use of, and so far as the marriage law is concerned we have had no experience of it.

*Q.* But do you think it is more likely to be effective?

*A.* It may be.

*Q.* Are you in favour of any legislation at all?

*A.* Yes, I am. I moved for Sarda's Bill being referred to the Select Committee although I held the view that the minimum age of marriage should be fixed at 12 for the reason that I have given in my note of dissent. I think that legislation should be undertaken but I am for a smaller minimum age.

*Q.* Are you for 12?

*A.* Yes.

*Q.* Why do you fix it at 12?

*A.* We have to look to the elements that will be covered by it. There is the conservative element which must be taken account of. For instance, in my own community there are some who say they would have nothing to do with marriage legislation. In order to bring them to it and make them agree I think 12 would be the right age. It will not interfere with the shastric injunction which has got real bearing with the orthodox people. They think that marriage must take place before 12. I think that there should be a law that even if marriage takes place, consummation should not take place before a certain age.

*Q.* Even if there is a marriage law you want the Age of Consent to be raised.

*A.* I have no objection to 16 but as a compromise I would agree to 14.

*Q.* You say that the law is abortive and the same reason would apply to 14 or 15. The cases won't come to light.

*A.* There is no other remedy, it is well-worth trying.

*Mr. Kadri:* Would you raise the age of marriage to 14?

*A.* I see difficulty in raising the age of marriage. In the first place it will be going against the orthodox and we should not ignore them and the second thing is that it would be a big jump. There are backward communities in which marriage takes place at 8, 9 and even 6 and for a community that is as backward as that it will be a very big jump to 14. They will make religion their plea and raise all sorts of objections to the operation of the Act.

*Chairman:* But if you start at 12 the same state of things will continue. There will be pre-puberty marriage and the orthodox will be at ease. Connection will take place at 13 or 14.

A. I think this will help a good deal in the advancement of social ideas.

Q. But how are cases going to be detected?

A. Legislation should go side by side with the education of the people.

Q. You have said that you would like the Age of Consent to be fixed at 16.

A. I shall have no objection to 16 but as a compromise I would fix it at 14.

Q. You suggest that because you think that is the ideal age for safe motherhood?

A. Yes, I think so.

Q. Supposing, as you said, the marriage age is fixed at 12 and the Age of Consent is raised to 16, what will be the effect? Will it secure us any better results than what we have now?

A. What I personally feel is that if you fix the age of marriage at 12 and alongside that you have propaganda in social matters—legislation alone cannot solve the difficulty—the effect will be that very few marriages will take place at 12 and you will reconcile the shastric view also. The marriages will take place just a year or two before the age you fix for consummation.

Q. You of course don't expect the Government to take up that work of propaganda.

A. That will be done by the social organizations and this legislation will help a good deal in carrying on that propaganda.

Q. Would you fix any age for extra-marital cases?

A. I feel very strongly for that. Outside marriage 16 must be fixed.

Q. I think you will agree that there are many cases of the breach of the statutory law even when it stands at 13.

A. When marriage takes place at an early age there must be a breach of the law. It is very difficult to detect when does consummation take place actually. It can only be detected when a girl conceives before 13 and up till this time ever since the law of 1925 I have not come across a single case like that.

*Mr. Kadri:* You represent Bihar and Orissa Province in the Assembly?

A. A part of it.

Q. May I know what are the principal communities inhabiting those parts?

A. Mythila, Bhomhar, Kaystha and Kshatrias are the principal communities.

A. Are the ages of marriage among these communities practically the same?

A. Almost the same. It varies between 11 and 14. I have no intimate knowledge of other communities as much as I do of my own community.

Q. You say you want to fix the age of marriage at 12 in order to placate the orthodox people. We have been told that they would have nothing to do with any age above 10.

A. I am sure a large section of these orthodox people would be reconciled if the age is fixed at 12. Even Malaviyaji who represents a very considerable section of the orthodox in his note of dissent made it clear that though he is personally in favour of 11 yet he will accept 12. Then I had a talk with several pundits and others of my own province and they said that if 12 is fixed that will disarm their opposition.

Q. They quote before us texts to the effect that after 10 the father has not the merit of giving a *Kanyadan* as the girl ceases to be a "Kanya" after that age.



A. But there are other texts to refute that. That is not the last word.

Q. Would you make the offence cognizable?

A. I would not like that though I agreed to the amendment made by the Select Committee in Sarda's Bill.

Q. Do you think that the punishment which is now provided is good enough?

A. I think a distinction should be made with regard to marital and extra-marital relations. A harder punishment should be given in extra-marital relationship and a lighter punishment should be given in marital cases.

Q. The present punishment below 12 is 10 years or transportation for life and between 12 and 13 it is 2 years. Would you retain it or reduce it?

A. I see no objection to it.

Q. It is said that sending the husband to jail means misery to the wife, that the domestic relations are estranged and that the punishment should be only fine or an admonition.

A. That would be an ample disgrace for a husband. I agree to that. But it should not be so with regard to cases below 12. That is beastly.

Mr. Kadri: Are there many unequal marriages, for instance, an old man of 50 or 45 marrying a girl of 10 or 12?

A. In the Hindu society one may have grand children and he may be 60 or more he sometimes marries a girl whose maximum age may be 12 or 14.

Q. Are there many such cases?

A. It is not rare. I will say it is not very uncommon.

Q. Are the social reform associations doing anything to discourage this practice?

A. They are. When any such case occurs the news is printed in the papers and names are mentioned and the man is held up to public ridicule and obloquy. The practice is fast disappearing.

Q. You seem to think that merely raising the Age of Consent without having the minimum age of marriage would not be very effective?

A. I am afraid, not?

Q. Suppose it is not possible to pass the marriage law because of the opposition of the orthodox people would you still have any objection to raising the Age of Consent?

A. In that case I would rather raise the Age of Consent. But it is, as I have said, very difficult to find out the breach of the law. The law practically will be a dead letter. I have scarcely heard of a single case.

Q. But still the existence of the law on the statute book would be an educative factor?

A. Certainly.

Mr. Bhargava: What is the age after which you would like to interdict marriage in the case of men?

A. If a man marries a widow I have no objection to any age.

Q. Supposing a man of 40 or 45 marries a virgin of 20 even then you will have no objection.

A. I will have no objection.

Q. So that if the Age of Consent is raised to 16 or 18 this evil of which you have spoken will practically disappear.

A. Yes, it will.

Q. So that if there is no marriage law there may be consent law and the age may be fixed sufficiently high.

A. Yes. I am not a medical man but I think the man has the power of producing children uptill 60.

Q. You say even now there are some reform associations which are working and when an old man marries a very young girl he is held up to ridicule at their instance. If there is the Age of Consent Law and the age is fixed sufficiently high will there be many more persons forthcoming and will such offenders be brought to book?

A. Yes.

Q. So that for all these evils the Age of Consent will be a panacea?

A. I would rather prefer to have the age of marriage fixed at 15.

Q. As regards extra-marital cases, what would you like the age to be raised to?

A. 18.

Q. In marital cases the father exercises the discretion which is needed, but in extra-marital relations you want to protect the girls going to schools and colleges and factories?

A. Yes.

Q. Would you like that all these cases may come to light?

A. Yes.

Q. What provision would you make for that? Would you place the obligation on the social reform associations to report these cases?

A. Public opinion is so strong and healthy that such cases are reported in the newspapers. Some correspondent in a village or city gives the news.

Q. Would you like that the present provision that every person may be able to bring cases to light may remain?

A. Yes. Public opinion is the thing. Creation of healthy public opinion is necessary.

Q. Would you place an obligation of necessarily reporting these matters on the Lambardars or the Presidents of the Union Boards?

A. I have noticed, young men who have got ideas about reform often report such cases. The lambardars or the presidents of the union boards are very often under an obligation to the man and as a rule they are not very reliable. Those who have got some sort of education are on the look out for some appointment and it is only the *residuum* who will report in the case of villages.

Q. Would you like to keep the power of the police and the court in tact as it is?

A. Yes. Whenever an old man of 60 marries a young girl, I have seen young men of the locality bending themselves and placing obstacles in the way.

Q. You will realise that the main evil is not of old men marrying young girls but often young boys are married to very young girls, and as you have yourself pointed out, sexual intercourse is to be found in a larger quantity when compared with the olden times when some restrictions were imposed by the parents which is not done now. What would you suggest to remedy this?

A. As I said, the only thing is to raise the age of marriage.

Q. So this is your absolute remedy?

A. You know in Bengal as soon as a girl is married she at once becomes a family member in the house of her husband, whereas formerly it was not so.

Q. What is the distance of time from which you have been noticing this tendency?

A. I have been watching this for the last half a century.

Q. I understand therefore that comparatively the age of maternity has also gone down.

A. Yes.

Q. In spite of the fact that marriages take place late?

A. Yes.

Q. Have you seen any case in which a girl became a mother early at 13 or 14 and the girl or her children suffered?

A. It is common knowledge. It is not so rare that I should single out one or two cases. I have noticed it almost in horror and shame that girls should become mothers at such a young age.

Q. You say in the villages if a girl becomes a widow, among the lower classes, she becomes the common property of young men. Is widow marriage allowed among these people?

A. It used to be allowed. Now they are trying to become the 'twice born'. Some of them call themselves 'Vaish Shah'.

Q. That was a tendency 10 years ago and now the tendency is reversed? Now, the higher classes want to marry their widows and the lower classes don't.

A. No. In Bengal there are so many marriageable daughters who cannot get any bridegroom. It is a question of numerical strength and an economic question also. Strange as it may appear, it is among the lower classes that you find re-marriage. It is because of necessity.

Q. Caste system has very little hold in Bengal, and is going down.

A. It is being relapsed.

Q. Have any inter-marriages taken place between community 'A' and community 'B' which did not take place before, within the last 3 or 4 years?

A. There are no inter-caste marriages. Some marriages are taking place among different sub-castes. Inter-caste marriages are rather rare. It is only the England returned and those who command good income that have inter-caste marriages.

Q. But their number is negligible.

A. Yes.

**Written Statement, dated the 7th November 1928, of Pandit NIL-KANTHA DAS, M.A., M.L.A., O. O. Sakhiḡopal, District Puri.**

1. There is neither satisfaction nor dissatisfaction with the state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. People in this part of the country in ordinary practice are scarcely affected by the said provisions.

2. Taking human nature as it is an advance of the present law must be considered desirable though in this part of the country actual circumstances seldom arise to justify any hasty or immediate change.

3. Crimes of seduction or rape are very rarely if at all found in this part of the country. The law of 1925 has therefore remained practically inoperative.

4. In our society in this part of the country, consummation of marriage generally takes place after thirteen. Among certain high castes marriage takes place before thirteen but the couple never meet till after another ceremony which takes place some time after the bride attains puberty.

5. Our girls generally attain puberty at or after fourteen. In cultured and well-to-do classes of people puberty sometimes comes earlier. But early marriage not being the custom even among many cultured castes early attainment of puberty has little to do with consummation.

6. Cohabitation is very rare in our parts of the country before puberty or before the girl completes thirteen years. In cases of remarriage of aged widowers among some higher castes consummation soon after marriage is sometimes observed. But no cases have been known to have come to Court.

7. No religious or Shastric injunctions have been known to exist recommending consummation of marriage before or at puberty.

8. Among Brahmins and a very small number of high caste people observing early marriage, "Garbhadan" ceremony is performed and it is performed generally not less than six months after the bride attains puberty. In most cases, however, the ceremony takes place a year or two after the girl attains puberty.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage unless such puberty comes after the sixteenth year.

10. An ordinary girl can give an intelligent consent to cohabitation with due realisation of consequences after and not before her sixteenth year.

11. There is a belief among our people that if a girl becomes pregnant before her 16th year, either the child or the mother must die and in many cases it is actually experienced.

12. Early consummation and early maternity are responsible for maternal and infantile mortality. Early child-bearing shortens the life of the mother and makes weaklings of children. This is ordinary experience.

13. Seldom have we heard of the statutory provisions about the age of consent talked among people of these parts.

14. Doting grandmothers sometimes desire early consummation of marriage for their grand children in well-to-do families, but, it is never the custom. The custom, however, runs in the contrary direction.

17. Under present circumstances obtaining in the society marital and extra-marital offences should be treated separately from each other. Marital offences, should however be treated with delicacy and tenderness they deserve, whereas extra-marital offences should be treated like ordinary criminal offences.

17—19. For the trial of marital offences village or ward-boards may be constituted with residuary powers of control and supervision exercised by the Court.

20. Legislation fixing the minimum age of marriage would be a much better remedy and much more in keeping with the public opinion in the country.

21. Under the present system of Government, to strengthen the penal law for these purposes may not be countenanced by many that know. Education and social propaganda are, however, better means. But the Government ought to countenance, encourage and even finance them.

## Oral Evidence of Pandit NILKANTHA DAS, M.A., M.L.A., Patna.

(Patna, 3rd January 1929.)

*Chairman:* Are you connected with any social reform movement?

A. I am not connected with any movement having any name or in any way registered or anything like that, but I take part generally in social movements in my parts.

Q. As such have you got to deal with village people at all and do you know their condition?

A. Yes, I am supposed to know.

Q. But do you actually know?

A. Yes, I came in contact with them.

Q. Do you live in a city?

A. In a village.

Q. Do you own land or belong to some profession?

A. I had my school there and now I have got my land.

Q. You have settled there.

A. My home is there.

Q. Can you tell us (about your part of the country) what are the classes that go in for marriage before 13?

A. Brahmins, Goldsmiths and Baniyas and one or two more.

Q. Do the rest all go in for late marriage?

A. Yes. Those classes only are bound to marry pre-puberty.

Q. What Brahmins are they?

A. All Brahmins.

Q. You say in answer to question No. 1, in ordinary practice the people in this part of the country are scarcely affected by the provisions of Sections 375 and 376, Indian Penal Code. Do you mean very few consummation take place below 13?

A. Yes.

Q. In answer to question No. 5 you say, early marriage not being the custom even among many cultured castes early attainment of puberty has little to do with consummation. What exactly do you mean by that? You just now said among them early marriage takes place.

A. It is practically the Brahmin class only which is a cultured class and in which early marriage takes place. The Kayasthas, Karans and Khamdayats have no early marriage.

Q. What do you mean by cultured classes?

A. Those who are literate. Those who can read and write. The indigenous inhabitants of the place, those who have not immigrated from some other parts are the cultured classes.

Q. Which is the literary class in Orissa?

A. Brahmins and Karans.

Q. Are they a clerical class?

A. Yes.

Q. When do you think consummation takes place amongst those that have pre-puberty marriages?

A. It is after the girl attains puberty. There is another ceremony when the girl is sent to her husband's house and after this only consummation takes place.

Q. Do you mean 'Goana'?

A. We call it Durbakshat.

Q. Does that mean that a few months are allowed to elapse before consummation takes place after puberty?

A. Yes.

Q. How much time is allowed?

A. As soon as the girl attains puberty the astrological indications are consulted and so many months or a year are allowed to elapse according to that. Generally not less than 6 months elapse.

Q. Are there any classes amongst whom you think consummation takes place below 13?

A. As a class, no.

Q. The cases must be very few.

A. Very few.

Q. If they take place at all they must be taking place in the lower classes. Is that it?

A. Not the lower classes. It is only among the Brahmins that it is possible.

Q. Why do you think these cases do not come to court?

A. They are not many. How can they come to court. They are too rare to come to court.

Q. In answer to question No. 20 you have said fixing the minimum age of marriage would be a better remedy than raising the Age of Consent. Is that so?

A. I am of that opinion, so far as marital relations are concerned.

Q. What age would you fix for girls and boys?

A. 16 for girls and 22 for boys. But under the present circumstances I am for 14 and 21.

Q. Do you think in your part of the country public opinion would be really in consonance with this view?

A. It will be countenanced by all other classes except the Brahmins.

Q. Would the Brahmins accept 14 and 18?

A. I don't think. They are religiously minded orthodox people.

Q. What is the percentage of those who have pre-puberty marriage to the total population?

A. 4 or 5 per cent. may be Brahmins and all the others put together may be 1 per cent. Altogether 6 or 7 per cent. have pre-puberty marriage.

Q. Have these questions been discussed at women's meeting.

A. Now-a-days they are discussing.

Q. Do you know of any resolution passed?

A. The women are for post-puberty marriage.

Q. Are you in a position to say what the orthodox women think? Do the ladies over 40 and 50 realize the consequences of their daughters being married at an early age?

A. Our customs are so very ingrained in our nature and our education has been such on account of tradition that the ladies never open up. Now-a-days some kind of education is given them. They generally would abide by the men of the house.

*Dr. Beadon:* In answer to question 11 you say, there is a belief among our people that if a girl becomes pregnant before her 16th year, either the child or the mother must die and in many cases it is actually experienced. Have you seen any case yourself in which the mother or the child died?

A. Yes.

Q. Would you mind giving us details?

A. There is a belief that if a girl becomes a mother before 16 complete she is in danger of dying and I have seen actually in the 16th year one or two girls have died.

Q. Was that long ago?

A. Very recently I have seen.

Q. In how many years have you seen one or two cases?

A. In about three or four years. It was talked about even before the child was born.

Q. Do you mean that they think that in 16 only it will be wrong and in 15 or any other year it will all right? In 16 they think it will be fatal.

A. Yes.

Q. What was the caste of the girl in those two cases?

A. Brahmin.

Q. Were they fairly well-to-do so that they could get good attention or were they poor?

A. One of them could get the help of a doctor and a midwife. She lived after 3 or 4 months treatment. In the other case the help of the doctor could not be taken and the girl died.

Q. Did the child live in the first case?

A. The child died in both cases.

Q. Have you found any evil results in any other class?

A. Generally other classes marry after puberty.

Q. There are the Vaishes and Sonars.

A. But they are so few that I have not observed any case. In my whole village there are only 3 Vaish families.

Q. What do you think about the children in these cases? Do you think they are as healthy as the children of older mothers?

A. In my village society I have not observed any such cases. But it is presumed that they should be weakly.

Mr. Mitra: What age would you suggest for extra-marital cases? In paragraph 10 you say a girl cannot realise the consequences before 16.

A. It should not be less than 16.

Q. The age of discretion according to law is 18. Don't you think that when the law fixes the age of majority at 18 in this case also the age of intelligent consent should be fixed at that?

A. I say, 'not before 16'. I should like it to be fixed at 18.

Q. You say that in your part of the country actual circumstances seldom arise to justify any hasty or immediate change. What do you mean?

A. What I mean is that in my part of the country, that is Orissa, I have never come across extra-marital cases. Therefore so far as Orissa is concerned no such hasty or immediate change is necessary. But I do not mean to imply thereby that the change is not required for the rest of India.

Q. You say that there is no Shastraic injunction as regards consummation. But are you not aware that certain Pandits quote certain passages which say that if a man does not live with his wife after puberty, he commits the sin of "Bhrunahatya"?

A. I know that there are texts of that kind. But my contention is that marriage according to our ancient Sastras is consummation and nothing else. I have seen in the Vedas a text in which a girl says to a man "Don't you consider me a mere girl, for you will find some part of my body is as hairy as that of the goats of Gandhara".

Q. Do you not think that there is anything in the Shastras supporting marriage before puberty?

A. Marriage before puberty is supported, but in ancient days marriage meant consummation. It was only about the 12th century that Parasara made a law on the subject. An interpolation to that effect was necessary because of the political and other exigencies of the times, and since then marriage before puberty has been the custom. Every one knows that in those days keeping a girl in the house after she had attained puberty meant danger, and therefore the Brahmins who usually wrote the Shastras made interpolations in the Shastras to the effect that marriage did not mean consummation.

Q. Do you not think that there are some people who seriously think that they are bound by the injunctions of the Shastras to marry their girls before puberty?

A. Yes; I know that the Brahmins in Southern India, and some Brahmins in our parts do so.

Q. Would you have legislation fixing the minimum age for marriage?

A. Yes; but as I have said in my last paragraph circumstanced as we are under the present Government, I should not like to strictly penalise marriages, and give the power in the hands of the police. There must be some safeguard. We must take account of the circumstances under which we are living.

**Q.** May I take it then that you are personally for penalising marriages below a certain age?

**A.** Yes.

**Q.** Would you have fine only, or both fine and imprisonment as punishment for the infringement of the law?

**A.** Had it been my own Government I would have both. But in the present circumstances I cannot say what I would like.

**Q.** Would you be in favour of exemptions in special cases in the case of orthodox people?

**A.** I would grant no exemptions had it been my own Government.

**Q.** Is it because you think that nobody seriously thinks that this religious injunction binding on him?

**A.** I personally have no respect for that kind of religious feeling. I take it to be an ignorant superstition.

**Mr. Shah Nawaz:** You say that the age for marriage should be 16 and that the Age of Consent should also be 16. Do you desire that both should be the same?

**A.** Yes; I should like to make no difference. Do you think that such a legislation fixing the minimum age of marriage at 16 would be generally accepted by the Hindu population of Orissa?

**A.** I am afraid the Brahmins may not accept and there will be opposition from them.

**Q.** What will be the extent of the opposition?

**A.** This being a social legislation, if it is properly handled the opposition will mean nothing. The opposition will not be of such strength as to cause any fear of political trouble.

**Q.** Will not the people be influenced by Brahmin opinion in any way?

**A.** In these matters they will be influenced by Brahmin opinion, but in social matters like these they cannot take such steps as will terrify us.

**Q.** Have you come across with women from the villages? If so? What opinion they generally hold?

**A.** They do not generally express their opinion on these matters.

**Q.** Will Brahmins oppose this legislation strenuously?

**A.** Some of them will oppose it. But we also have got a hold on our society and our influence will go more than that of the orthodox people. In these matters we have faith in our capacity to guide public opinion.

**Q.** Would you have compulsory education for boys and girls?

**A.** My opinion is that there cannot be two opinions on that matter. There should be compulsory education.

**Q.** Do you think that will be one of the methods of propaganda and doing away with the evil of early marriage and early consummation?

**A.** Yes.

**Mr. Bhargava:** You say in paragraph 21 that the Government should countenance, encourage and finance social propaganda. Will you give us some concrete example as to how this can be done?

**A.** Government should encourage propaganda on these matters. Government should educate public opinion by encouraging men engaged in the work and otherwise helping them.

**Q.** May I take it that you want compulsory education for girls, and that you would like that Health Officers should be in charge of propaganda of this type? Would you also like that rewards might be given to village officials like Patwaris and others?

**A.** Yes; I think there should be magic lantern lectures on these subjects. Instead of rewarding officials, I should think that non-officials would be better, because these officials are always under suspicion.



**Q.** What is the usual difference in the age of the husband and the wife in your part of the country?

**A.** 3 to 5 years.

**Q.** What is the usual age of marriage of the boy?

**A.** Amongst the Brahmins it is 16, and amongst the non-Brahmins it is 22 to 25.

**Q.** What is the usual age of marriage of the girl?

**A.** It is about 9 to 11 now amongst the Brahmins; amongst the non-Brahmins it is 16 to 18.

**Q.** In the cases in which there is early marriage, especially marriage before puberty? Is the girl kept at the parents' house for some time, or is she sent to her husband immediately after marriage?

**A.** The girl is kept in her parents' house till she attains puberty and some time elapses between puberty and consummation. There is a ceremony at the time of consummation.

**Q.** Is it the same as the Gaona or the Muklawa ceremony?

**A.** It is called the Dubakshat ceremony.

**Q.** Is there a ceremony like that amongst the non-Brahmins?

**A.** No.

**Q.** May I take it that according to you this ceremony is not countenanced by the Shastras because according to you consummation should take place at the time of marriage?

**A.** Before Parasara marriage meant consummation. It was only after Parasara that this ceremony came into vogue.

**Q.** Supposing it is not possible to have a marriage law, would you still be in favour of fixing the age of consent at 16?

**A.** In marital cases it can be 16; in non-marital cases it should be more than 16.

**Q.** You say you were in charge of a school. Would you be in favour of a rule saying that married boys should not be admitted in schools?

**A.** It is being done in the Kangri Gurukul now.

**Q.** The Allahabad University is just proposing to have that sort of rule.

**A.** That was formerly the custom amongst the Hindus, namely, their observing Brahmacharya. But I don't think that in the present circumstances of our society we can enforce such a rule. But if you say that up to a certain age there should be no married boys in a school I will agree.

**Q.** Your province is near Bengal. In Bengal we understand that 80 per cent. of the marriages are pre-puberty marriages. Can you tell us why there is this difference between your province and Bengal?

**A.** I should think that it is due to the Muhammadan influence in Bengal. In Bengal they follow Raghunandan and other books written only in the 15th century where early marriage has been laid as an injunction on the Hindus. In those days nobody wanted to keep a girl unmarried after puberty.

**Q.** Have you got widow marriage in Orissa?

**A.** There are no widow marriages, though there are post-puberty marriages amongst some classes.

**Q.** Is there any difficulty due to the dowry system here?

**A.** The dowry system is just beginning here. Educated husbands are asking for dowries.

**Q.** You refer to aged widowers marrying young girls. Is it a great evil in Orissa?

**A.** To a certain extent there is the evil.

**Q.** Is there the evil of selling girls?

A. Yes; if an old man loses his wife he pays money and gets another girl.

Q. Do you think there will be 10 to 15 per cent. of such cases?

A. It will not be so much as that. It is not generally encouraged by society.

Q. Is there any social reform association working in Orissa?

A. There is no organised association as such. When I had my school I made it the centre of a reform association. But after the advent of the non-co-operation movement which preached the popularisation of khaddar, the removal of untouchability and other things, it is practically defunct.

Q. In paragraphs 18 and 19 you say that village and ward-boards may be constituted with residuary powers of control and supervision exercised by the Courts. What do you mean by residuary powers?

A. I want that in cities and towns there should be boards formed in every ward to go into these cases whenever they occur and residuary powers should vest in the District Officers or somebody else so that there might not be corruption.

Q. Do you mean to suggest that the powers of investigation and trial should be separated from the power of reporting such cases?

A. What I mean is that after the trial is made a report should be sent to the court to be supervised; but the trial may be made by the Boards.

Q. Who is to make the investigation?

A. The Boards. They should try the cases also.

Q. Who is to award the punishment?

A. The District Magistrate or something like that.

Q. May I take it that you want that respectable people in the villages should be associated in the trial and investigation of these cases?

A. Yes.

Mr. Md. Yakub: In paragraph 1 you say that people in your part of the country are scarcely affected by the said provisions. How is it?

A. Because our girls menstruate after 13 and no consummation takes place before 13 and therefore the law does not affect us.

Q. Do people know the provisions of the present law?

A. They do not know unless there are cases.

Q. What do you mean by hasty or immediate change?

A. Supposing you raise the age at once to 16 or 18; I say though it may be necessary in some parts of the country it is not necessary in our part of the country. Circumstanced as we are I say that we have no need for it.

Q. Do you think that in your part of the country there will be opposition for fixing a minimum age for marriage?

A. There will be some opposition; but it should not be minded.

Q. Will it be a strong opposition, or will it be only amongst a small class of people?

A. Whatever the extent and intensity of the opposition, I think we shall be able to combat it.

Q. Do you think there will be a strong opposition in Orissa?

A. There will be some discontent, but it will not lead to riots. But we who have been elected by the people feel that we have a hold over the people and that we can guide them. I have practical experience of it in Orissa in the course of the last 7 years. They wanted to excommunicate me but they could not.

Q. What do you want to make a difference between marital and extra-marital cases? Do you not think that it is very difficult to detect marital offences?

A. Marriage has got with it some holy associations with most people, whereas extra-marital offences are penal offences.

Q. Do you not think it is difficult to detect marital offences? Do you not therefore think that they should be treated more severely?

A. Therefore it is that you should change the marriage law. When you have allowed a young boy and a young girl to be married, why do you punish them when it is the society and not they who are responsible for the action. In extra-marital cases on the other hand it is the man who is responsible.

Q. Do you want that the husband should exercise tyranny over his wife?

A. I am talking of consummation only, and I do not think that there is any tyranny in that.

Q. Do you not think that consummation before a certain age is tyranny?

A. Then the best thing would be not to marry them.

Q. Do you think that the parents should be punished in marital cases?

A. The better remedy would be to change the marriage law. In the new legislation proposed there is a provision for punishing the father in some cases. You may do it like that.

Mr. Kadri: What is the age when you would fix for extra-marital relations?

A. 18.

Q. You say that Muhammadan rule has been responsible for early marriages in Bengal. On the other hand is it not a fact that Manu lays down certain ages for marriage?

A. It is not Manu but Parasara who says that girls should be married at such and such an age in the sloka "Ashta Varsha, etc".

Q. Do you think it was before or after Muhammadan times?

A. I believe it is after. It may be in the 13th century. Historically my opinion is that the fear of Muhammadan proselytisation terrorised high class people and made them write such things.

Q. Is this opinion based upon any historical data?

A. Yes; for instance there is Kalidasa and Bhavabhuti and other inscriptional literature. But nowhere do we find any reference to early marriages. You must look to circumstances like these.

Q. What is your ground for saying that Parasara laid it down because of Muhammadan rule?

A. Vincent Smith and other historians say that these Smritis are later. I think Weber also says the same thing in his History of Sanskrit Literature. It has been decided by Orientalists in Europe that these books were written after the 12th century.

Q. Can you give us the names of any works which support your opinion?

A. I will send you the references later if they are available. Meantime I would ask you to go through MacDonald, Max Muller, and Weber.

Q. Are you conversant with the system of birth registration in Bihar and Orissa?

A. I have not got detailed ideas about birth registration.

Q. Can you give us any suggestions as to how to improve this system?

A. I have not studied the system in detail. I do not know how that can be adduced in evidence.

Q. Would you be in favour of registration of marriages in which the ages of the marrying parties and other particulars might be given so that it might serve as a record of marriages?

A. I have not given thought to that.

Mr. Kanhaiya Lal: Are you in charge of a school?

A. I was in charge of a school, but not now. I am now merely a husband-man, or agriculturist.

**Q.** Is it your opinion that marital cases should be made non-cognisable?

**A.** I do not know anything about the legal side of the question, but my point is that there should be no police interference.

**Q.** According to the present law, cases below 12 are cognisable and above 12 non-cognisable. Would you retain the distinction?

**A.** In India the question of marriage is one which should be tenderly and delicately handled. That is why I say that the police should not have a hand in the matter.

**Q.** Therefore you would not like the police to have any hand in the enquiry in regard to marital cases.

**A.** I do not think it would be safe, circumstances being as they are at present. But if the department in charge of the police becomes responsible to the people, my views might then undergo a change. I am obsessed with the idea that now-a-days any slight inclination on the part of an individual is likely to be subdued with the help of the police or the C. I. D.

**Q.** If we require that enquiries in regard to marital cases should be made by higher officers of the police like the District and Deputy Superintendents or Police, would you still object.

**A.** The reason of my objection is the suspicion of the police as a department.

**Q.** The fact that there will be higher officers of the police would make no difference in your view.

**A.** Higher Police officers giving evidence before the Simon Commission admitted that the entire police force is corrupt.

**Q.** In marital cases would you allow the cases to be compounded so that good relations might be restored between the husband and the wife, if the prosecution is withdrawn.

**A.** I have not considered it, and therefore I cannot give any opinion on it.

**Letter, dated the 28th January 1929, from Pandit NILKANTHA DAS, M.L.A.**

During my evidence before your Committee at Patna, on 3rd January, I made reference to a passage in the Rig Veda to say that girls not fully grown up are in danger of being spurned by their lovers.

Another statement I made was to the effect that post-puberty marriage was distinctly forbidden in the Parasara Sahmita, which is a work of the 12th or 13th Century; and that this custom became rigid in our society as a result of the Mahamedan coercion of those early days, when parents did not dare to shoulder the responsibility of keeping grown up girls unmarried.

On both these points you desired me to give authentic references in a note addressed to you. Herewith I append the desired note for your Committee's information.

**NOTE.**

**1. Vedic Reference regarding Age of Consent.**

Rig Veda Astaka I, Chapter I, last verse of Sukta 126 may be translated as follows after Sayana :—

"Come to me and embrace me. Closely touch my (private parts). Don't consider them undeveloped or overgrown with small hair. I have been very hairy all over there—as hairy as the hairiest among the Gandharian she-goats."

In Nirukta 3, 4, 3. Yaska quotes this self-same passage which he comments on, and the commentary may be literally translated thus:—

“A woman apprehending that she may not be accepted by her lover (husband) says,—‘O Lord, (lover) coming (to me) and embracing (me) (feel) that part (of my body), which part in women is rubbed (used in sexual intercourse) by men (males). Why? (Because) mine (you) don’t consider small (undeveloped), i.e., don’t (even) consider (as having) small hairs. For I know, cohabiting such women as have no hair (there) is forbidden in Smritis, (which enjoin)—(No man) ought to desire sexual intercourse with a woman who has not grown hair (on her private parts). Therefore I state for your clear knowledge that all those parts of my body—where in case of a woman hair grows—have been full of hair. To what extent have I been hairy? I have been as hairy as the she-goats among the Gandharians, i.e., as the hairiest of the she-goats born and bred in Gandhara. Hence have sexual intercourse with me without compunction (apprehension).”

## 2. On the age and circumstances of post-puberty marriage.

Vedic literature including the Sutras where we find the very basis of the pure and unalloyed Indian Culture has never contemplated marriage or intercourse before puberty or full growth.

Later in Puranic age though early marriage for girls might not have been a quite forbidden thing, post-puberty marriage was the custom. Some Smritis like the work of Yajñavalkya may be said to have countenanced the idea of not keeping a girl unmarried by the time she attains puberty. Such stray verses in those works are either later interpolations or, if genuine, may be due to circumstances connected with the coercion of the conquering Scythians and Hunas of those days. The circumstances were accentuated all the more on the advent of the Mahammadans and post-puberty marriage came at last to be distinctly forbidden not exactly in the language of Parasara Sahmita, which is a work of the 13th century (*vide* Prof. A. MacDonell’s History of Sanskrit Literature, page 429), but in its commentary by Madhabacharya of the 15th century (*vide* the same book and the same Chapter). In this Madhabacharya quotes from Sambarta Smriti, a work evidently later than Parasara, and yet little known but for the quotation, ‘to fix the formal age limit of puberty at beyond 10 years for all girls. The quotation may be translated as follows:—

“At eight years a girl is called Gouri; at nine she is Rohini; at ten she is Kanya (a bride); and beyond that age she must be considered to have menstruated”.

This commentary of Madhabacharya is almost invariably quoted as authority on early marriage of girls.

Here I may further state for your information that the shrewd observer Al’Biruni (11th Century) never speaks of this revolting custom as such, though he refers to early marriage of children in general probably obtaining in some rich families.

Bengal, where coerced conversion of the Mahammadan was a menace to all classes of people and specially their girls, produced the Smriti-maker, Raghunandana in the 15th century, and his unique and stringent injunctions for pre-puberty marriage of girls for almost all castes, and his strict provisions for the rigid authorities of womanhood, etc., bear indelible marks of the then conquering Faith.

In many other parts of India specially to the South only the high class people were affected by Mahammadan coercion, and hence pre-puberty marriage is restricted to those classes only. The non-Vedic and non-Hindu restriction of the “Parda” is an institution running parallel with pre-puberty marriage due to the same influence of Mahammadan coercion and may be studied as a side issue in this connection.

**Written Statement, dated the 13th January 1929, of Mr. K. F. JAYASWAL, Bar-at-Law, Patna.**

I am in favour of passing a law prohibiting marriages below 14 and 18, but I am not in favour of amending the Penal Code; as to the former the opinion of ladies I have consulted is for a still higher limit.

1. I am not aware of any dissatisfaction with the present law as to age of consent.

2. An advance on the present law, though a desirable thing in the abstract, will be fruitless. Cases of breach will as a rule never come to light, and a new law like the old one will remain nearly a dead letter. For advance we can trust to the growing public opinion which has become quite powerful and effective in the matter.

3. Such crimes are not frequent in Bihar.

4. I would propose penalising of early marriages, at least on the lines already proposed.

5. At about 14, this is general.

6. Soon after puberty as a rule. Cases do not come to court.

7. Consummation at puberty is generally the outcome of religious injunctions in priestly and priest-ridden classes. Hindu texts do not allow consummation before puberty but they do condemn non-marital stage after puberty. But Hindu history is full of illustrations that the injunction was not always followed, and amongst non-priestly castes, prominently Kshatriyas, the injunction never obtained force. In tracing the history of the law we reach a point of time when there was a cry for the increase of population. It seems that the law was introduced to meet that situation.

The Shastras regard the breach only a sin. No leges or statute (e.g., in the statutes of Chandragupta) are there, making the offence punishable in a lawcourt, while most of the offences are both sins and crimes.

The ancient law regarding it is not one of the basic injunctions. The performance of marriage is basic, but not so the direction about age. Many injunctions, e.g., killing of a calf on the arrival of a guest, have been totally given up in view of later experience. Many ancient and once-popular customs, e.g., marriage between cousins, have been abrogated by common consent.

The ancient limit in marriage belongs to that class, which could be changed.

8. Goana is usually performed. But it has reference to puberty incidentally and occasionally. But parents do take care not to allow mating before 14 or 15 for girls and about 18 for boys. Garbhadhana is gone out of use.

9. In my opinion and in the opinion of ladies I have consulted, as a rule puberty is not a sufficient index of fitness. As a rule the period beyond 16th year is the proper time, and in cases of delicate constitutions it should be 18th. I am in favour of an age nearer 18th than 16th.

10. At 18th.

11. Yes. Many cases. But details cannot be given specially in writing.

12. Yes.

13. There is a general and mass advance in public opinion in favour of marriage beyond young age (beyond 11-13 in girls and 16-17 in boys).

\* In educated classes it is for much higher limit.

14. No, except probably amongst the poorest (the labouring classes).

15-21. My opinion is evident from earlier replies. Public opinion here would also prefer penalizing early marriage to fixing a higher age of consent and making the Penal Code more rigorous and inquisitive in the matter. In fact the social opinion which has grown by itself and has been aroused by social forces and propaganda can be trusted to be sufficiently effective.

### Oral Evidence of Mr. K. P. JAYASWAL, Patna.

(Patna, 3rd January 1929.)

*Chairman:* How long have you been at the Bar?

A. 19 years.

Q. Do you come into contact with people in the villages? Do you know the conditions in the villages?

A. For your purposes, fairly well.

Q. Do you prefer penalising marriages to fixing a higher age of consent?

A. Yes.

Q. You say that public opinion would be in favour of penalising marriages rather than a higher age of consent. What do you mean by public opinion?

A. I mean what is generally understood by the word "public opinion", namely the intelligentsia.

Q. Are there large communities in this part of the country who have early marriages and early consummation of marriage?

A. They are generally found amongst the lower classes, but even there it is on the decline. Amongst the higher classes, whether they have received European education or not, the tendency has been for higher limits. Amongst Kshatriyas and classes like that early marriage is practically unknown.

Q. We are more concerned with consummation of marriage. Have you reason to believe that there are a large number of cases of consummation before marriage?

A. Such cases are very rare.

Q. Below 15?

A. Not much.

Q. Below 16?

A. I should think that between 15 and 16 is the general rule. I think this is due to the custom of performing the Gaona ceremony.

Q. We have been told that this does not necessarily have any connection with consummation of marriage?

A. It is mostly with a view to mark the period of the occurrence. In some cases it becomes a more form, but it is the practical working of it. It became a necessary ceremony in view of child marriage.

Q. Where child marriages exist amongst the lower classes, what would be the age of consummation?

A. I think it would be 13 or 14 on the average.

Q. Have you reason to believe that amongst those classes the present law of the age of consent is broken.

A. I do not think the law is broken, because I think consummation is more towards 14 than 13.

Q. We were told that amongst the lower classes it is all post-puberty marriage, and that it is only amongst the Brahmins, Vaisyas and Sonars that there are early marriages.

A. Those who say so have some one in view when they talk. They do not strike averages. On the other hand when I talk I think more of the generality of the thing.

Q. Do you know of any communities here that marry their girls after 16?

A. There is no such rule. But in the case of people who come from old landed aristocracies it tends to be higher and would certainly be 15. It may sometimes be 16.

Q. Do you know about a dozen cases of girls who were actually married after 16?

A. Yes.

Q. Are you then in a position to generalise with regard to the children and the mothers of that age and mothers below 13 or 14? Is there any difference between the health of the girls and their children?

A. There is a tremendous difference. There is no doubt about that.

Q. Do you think that orthodoxy is strong in Bihar Orissa so that there will be some risk attendant on the passing of the law penalising child marriages?

A. Orthodoxy is strong, but that does not mean that with regard to this social legislation there would be great opposition because there is amongst the orthodox community a great advance in this direction. One instance of the Hindu Law being superseded by itself is with regard to this age affair.

Q. Are there cases of concealed puberty just to avoid the talk that it is post-puberty marriage?

A. I think such an idea exists in Madras because I understand puberty is celebrated there. That does not exist here, and therefore there is no such fear.

Dr. Beaton: You say in paragraph 11 that you know many cases in which injury has occurred. Would you give us one or two cases that have come to your knowledge?

A. I can tell you generally that it is very injurious to the mother. They sometimes develop consumption, and sometimes there is physical deterioration. They never develop fully into big women.

Q. We are told that the development of consumption is due to other causes like frequency of pregnancy. Can you give us concrete cases in which the other things were all right, yet the girl succumbed as a result of early cohabitation or early pregnancy?

A. My opinion in this respect would be purely that of a lay man. But I might say it is one of the big contributory causes. I cannot say whether it is due to one factor or the other. We very often see girls married young, giving birth to children early and never recovering and sometimes dying. We know of cases of men who have had the misfortune of having had to marry three wives.

Q. In the last 4 or 5 years how many cases would you have like that?

A. I think it would be 15. I have not specially directed my attention to it.

Q. Do these men who marry a second time and third time marry young girls or old girls?

A. You cannot get older girls. We have got the Widow Marriage Act, but only some people take advantage of it. As a rule it does not obtain here. Therefore most of these people take only young wives.

Q. Have you widow remarriages here?

A. Yes; but not up to the Vaishya community. Even amongst the Sudras it is confined only to the lowest classes.

Q. Do you know anything about the aboriginal tribes here?

A. No.



*Mrs. Nehru:* Is caste hold still very great here?

A. Yes.

Q. Does it mean that the customs go by castes and not by classes?

A. The custom is a caste custom.

Q. Do you mean to say then that if early marriage is practised, it is practised in a certain caste and not in a certain class?

A. It is a social institution and it covers everybody and is not differentiated by caste.

Q. But are there certain people here amongst whom early marriage is not practised?

A. In some castes it is practised more and in some castes it is practised less but it is common in all castes. I would say that it depends upon the intelligence of the family and on the social position. You may find that amongst the lower classes there are intelligent families and well-to-do families who do not practise early marriage.

Q. Are the lower classes composed of all castes?

A. Yes.

Q. To what community do you belong?

A. I belong to a Kshatriya sub-caste.

Q. What is the condition of education of women in your community?

A. Very poor.

Q. Do girls at all go to schools amongst your caste?

A. Yes.

Q. Are there any girl graduates in your community?

A. There are very few. I may say that in the whole of Bihar there are about 15 to 20 girl graduates.

Q. Is there any women's college here?

A. No.

Q. Do not Beharis generally send their girls to schools?

A. It used to be so about five or six years back but not now.

Q. Is purdah very strict here?

A. It used to be so since a particular point of time but after that famous meeting women are continuing to go out. The movement is a very popular movement and in fact the progress is very rapid.

Q. From your statement it seems that you do not believe in the age of consent as far as it applies to marital relations. But do you think that it can be made use of in any way as a propaganda measure?

A. If you have a separate criminal procedure code for that and if you don't give the matter to the police and if you have a magistrate to make the enquiry and so on, then I would say yes.

Q. Supposing the power of complaint which now lies with the public is restricted only to certain associations and the power of investigation is also given to them, do you think that this law will work effectively?

A. I think then it will work very well.

Q. What punishment would you advise in a case like this?

A. 3 to 6 months.

Q. Remembering that you are advocating it only as a propaganda measure, do not you think this punishment will be very heavy?

A. I don't want any social measure to be severe.

Q. In that case if the case is not very heinous or if the age of the girl is not very low or if there is no injury resulting from it, don't you think that it will be better if simply a bond is taken from the boy to keep the girl separate up to the prescribed age?

A. That will be very good.

Q. But in case of injury or when the girl is below 12, would you advocate the present punishment to remain as it is now?

A. Yes.

Q. What is the reason for these cases not coming to Court?

A. Such cases themselves would be very rare.

Q. When you say that there is a general and mass advance in public opinion in favour of the marriageable age being fixed, do you include the villagers also?

A. I include the intelligentsia of the community.

Q. Is it the puberty or the age of the girl which is really the deciding factor for the consummation of marriage?

A. In a great number of cases puberty is the deciding factor and consummation of marriage takes place immediately after puberty generally.

*Mr. Shah Nawaz:* I understand that pre-puberty marriages are very common in this part of the country. Do majority of the people marry their girls before they attain puberty? Will it be 51 per cent?

A. I think it will be 50 per cent.

Q. Are those childwives sent to the houses of their husbands?

A. Generally not.

Q. When are they sent?

A. After puberty they are sent.

Q. Are they sometimes sent before puberty also?

A. Yes.

Q. Do the husband and girlwife sleep in one room?

A. It is a very large question. You may take it that as a rule the custom is that the girl sleeps with the mother-in-law. Generally you will find that in higher or middle classes the same bedroom is not provided for the couple.

Q. What I am driving at is this. We heard in Bengal that some marriages are consummated before girls arrive at the age of puberty. Do you believe that such cases occur here?

A. I have no great knowledge of it but I can say that there would be such cases.

Q. Would there be a considerable number of such cases?

A. No.

Q. In your answer to Q. 7 you have said that in tracing the history of the law we reach a point of time when there was a cry for the increase of population and that the law, it seems, was introduced to meet that situation. Have you got any authority which will point out that this was due to the demand of population?

A. I have dealt with this point in my book on "Growth of law from the Vedic times" but I haven't published the book yet. There was a point of time and that would be 400 B. C. when the Greeks attacked this country and they were defeated. Roughly speaking this period can be taken as the middle period of the Indian History. There you find various measures introduced towards the increase of population. That is the first time in Hindu law that you get the direction that beyond puberty marriage shouldn't be postponed because the vedic ritual pre-supposes full manhood and womanhood before the marriage could be performed. It amounts to a contract.

Q. Do you think that the Hindus of puranic times wanted able-bodied men as quickly as possible?

A. They were in the need of having large-bodied men for the country to become prosperous, and to be immune from aggression and necessity of fighting for existence and in Manu smriti also you find that marriages become necessary only for the purpose of keeping up the race as a race and not as a fighting race.

**Q.** Can you tell me the reason why a Hindu resorts to pre-puberty marriage?

**A.** One of the reasons that I can give you is this, viz., the idea of having population. They say clearly "don't miss any opportunity of being a mother or being a father". The idea is that we must have children at the earliest possible opportunity.

**Q.** Do you think that the evil of early marriage and early consummation is so very large and widespread that we must resort to legislation?

**A.** I should think so.

**Q.** Do you think that there will be no serious agitation?

**A.** In every case there would be an agitation. Almost in every country there is agitation. So it won't be a serious agitation.

**Mr. Bhargava:** Do you know anything about the Birth Registration here in Bihar?

**A.** Yes.

**Q.** What is the system here?

**A.** I don't know exactly the actual system but in the villages, the chowkidar keeps a book and when there is a birth he notes it in the book and then he sends it on to some higher police authority and it is preserved by the police authorities.

**Q.** Do you mean to say then that the obligation to report births is to-day imposed on the chowkidar and not on the parents of the boy or girl?

**A.** I have not said that. I say that it is the chowkidar's duty to record them and they are I believe generally reported.

**Q.** In your practice have you found that these births are generally accurate?

**A.** I think all the births are reported except a few.

**Q.** Would you like that an obligation may be imposed on the parents to report the births so that if there is a marriage law, breaches of it can be brought to light?

**A.** I would suggest one course. What I find in the course of my experience is this that it becomes very difficult to identify the child. If you impose an obligation on the parents to register the marriages not in the usual legal sense of registration, there would be very little object to give any wrong age at the time and marriage is such a public function that it would be generally known to many people. If the age is noted down at that period, it might be helpful.

**Q.** From this may I take it that you are in favour of a marriage register just as a birth register?

**A.** Yes.

**Q.** Would you further provide that when a marriage is reported then the person on whom the obligation of reporting is made should along with reporting the marriage also bring the birth certificates of the pair married?

**A.** Probably it would be irksome. It might work in the towns.

**Q.** Supposing the father of the girl goes to report the marriage and the girl is married at an age which is prohibited by law, don't you see that in the absence of the birth certificates, it is impossible to know their correct ages and whether the marriage law has been infringed or not?

**A.** I admit there is danger but it won't be of a very serious character, because such cases will be very rare.

**Q.** Even in those rare cases there will be danger and unless the birth certificate is accurate the marriage register will be of no use. Is it not so?

**A.** Yes. I was answering your question whether the State should insist on the production of the birth certificate by the parents at the time. I say that you will be throwing too much of burden upon the man and

of course you may get it for the purposes of your prosecution but I shouldn't demand too much from the citizen as he is at present.

Q. So that if there is a register for marriages, would you place the obligation to report the marriages upon the public officials or upon the parents?

A. You can place this obligation upon the parents.

Q. And what about births?

A. An obligation may be placed also upon the parent to report the births.

Mr. Beadon: In your practice do you find that the birth register has been destroyed?

A. In many cases the birth register hasn't been produced.

Mr. Bhargava: May I know whether you are definitely of opinion that in Vedic times girls were married after they had attained puberty?

A. Not only were they married after their attainment of puberty but after the attainment of womanhood, they were married.

Q. At the time of the Gaona ceremony does the parent of the girl give her presents of cloths, and ornaments much more than what they give in marriage? Is it the custom here?

A. I belong to U. P. I have attended no Gaona ceremony here in Bihar.

Q. Supposing we are unsuccessful in having a marriage law and only a consent law is passed, would you like that with a view to prevent the commission of offences against the law of consent a provision may be made just as there is a provision contained in Section 107 in Criminal Procedure Code whereby light bonds may be taken from the parents?

A. I would be very strongly opposed to having anything like the provision contained in Section 107 in the statute books. As it is it is a very bad piece of law. I don't want to have a law on the analogy of Section 107.

Q. Do you want to have a law at all relating to the age of consent?

A. I say it won't be useful.

Q. What measure of legislation then do you suggest?

A. Well, penalize the early marriages and that is the most potent way.

Q. Is early marriage practised amongst the Kshatriyas?

A. There are some who practise it.

Q. What is the percentage of literate people about whom you say that public opinion is very strong and growing as compared with the entire population?

A. About 30 per cent.

Q. As regards the 70 per cent. of the people do you know what is their opinion about the prevention of early marriage and early consummation?

A. In social matters when there is an improvement, naturally others follow it.

Q. So may I take it that these people will not be opposed to any such law?

A. I cannot give you an undertaking. I think that everybody is feeling the necessity economically and otherwise.

Q. You say in your reply that you are in favour of passing a law prohibiting marriages below 14 and 18 and that you have consulted the ladies and they are for a still higher limit. What is their higher limit?

A. They want about 17 for marriage.

Q. Again you say that marriage between cousins has been abrogated by common consent. Do marriages take place in Bihar amongst the cousins?

A. I am talking of ancient history. I say that there have been laws and rules amongst the Hindus. These laws and rules have been modified

in course of time so that for this particular province early marriage is also such an evil that it can be modified.

**Q.** According to you, so far as the Hindu Shastras are concerned, is there anything in the Hindu Shastras which would militate against a law like this?

**A.** I say that there were very many things in the Hindu Shastras which are modified now.

**Mr. Md. Yakub:** You say that in your reply to Q. No. 1 that you are not in favour of amending the Penal Code. Is it simply because that such offences very seldom come to light?

**A.** Yes. Secondly if it is a penal provision, it may lead to the prosecution of ignorant people and extortions. Therefore you have got to think of the protection of the society as well. It won't harm the middle class men but it may turn out to be a kind of oppression with regard to the village folk.

**Q.** Are you not aware of the fact that this provision exists in the Penal Code and has been existing for a long time?

**A.** Yes.

**Q.** Supposing the present law is amended by a year or two, how will it add to the hardship of the people?

**A.** We always find that when there is an amendment of the law it gets a new life again and thus it becomes very prominent.

**Q.** But this age from 12 to 13 was raised only two years ago, and did not get any new lease of life. Where is the harm therefore if it is amended by a year or two?

**A.** It is difficult to say anything on this point.

**Q.** If inspite of giving the power to the police, some other agency is employed, then are you in favour of some such legislation?

**A.** If the police have no hands in these cases then I am in favour of a legislation.

**Q.** In case Sardar's Bill fails in the Assembly, then don't you think that some such thing is better?

**A.** Yes. I agree to this provided you change the procedure.

**Q.** Are you for penalizing the early marriages just on the lines of Sardar's Bill?

**A.** Yes.

**Q.** Do you also want to penalize the parents or other persons who take part in solemnizing such marriages?

**A.** If you get hold of the priests that would be very good, and that would have a very good effect.

**Mr. Kadri:** In your last paragraph you say that public opinion here would also prefer penalizing early marriage to fixing a higher age of consent and making the Penal Code more rigorous and inquisitive in the matter. What do you exactly mean by this?

**A.** What I mean is this that I should prefer one to the other.

**Mr. Kanhaiya Lal:** Regarding the question of protection of the people some suggestions have been made before us and I should like to place them before you. One suggestion is that in all marital cases the enquiry should be conducted by higher Police officers like the Deputy Superintendents of Police and Circle Inspectors. Will this minimise the difficulty and remove the fear?

**A.** Where is the time for these people to make enquiries in these matters?

**Q.** In a province like this only three or four cases might occur every year and these high officers can find time to make enquiries in these cases.

**A.** I have nothing to say anything against the Deputy Superintendents of Police and they are as good as the Deputy Collectors because they are

all good middle class men; but it is better to have a magistrate or better still is, as Mrs. Nehru has said, a committee.

Q. Supposing every magistrate takes up a case of this nature on the report of the police or on the complaint of others and makes a preliminary enquiry before issuing a notice or summons or a warrant would that be a sufficient protection to the people?

A. I think so. The enquiry should be made by the magistrate.

Q. At present cases under 12 go to a Sessions Judge and cases above 12 go to a Magistrate. Now instead of these cases going to two different forums, it has been suggested to us that these cases may be sent to a matrimonial court consisting of a magistrate and two non-officials. What do you think of this suggestion?

A. That will be very good.

Q. Would you have these two non-officials as assessors or jurors or as co-judges?

A. Co-judges.

Q. Should these marital cases be made compoundable with the sanction of the court so that good feelings might be restored, if possible, between the husband and the wife? Would you recommend this suggestion?

A. I shall make these cases non-compoundable.

Q. Even if a girl is 13 years old and the boy is 16 or 17 years old would you still make such a case non-compoundable?

A. This is an offence against society. There is no room for compounding here. Give him if necessary a very light punishment.

Q. In cases of this nature where there is a breach of the law, would you exempt boys under a certain age, say 16 or 18?

A. I would exempt boys up to 13.

Q. Would you not exempt boys up to 16?

A. No.

Q. Would you in these cases make the parents of the bride and bridegroom liable or would you make such of them liable as may be found responsible?

A. I would prosecute the abettors.

### **Written Statement, dated the 12th August 1928, of Diwan Bahadur SRIKRISHNA MAHAPATRA, M.L.C., Cuttack.**

With reference to your Circular letter No. 42-A. C. C., dated July 1928, received with Bihar Government's letter No. 1210-1320, dated the 2nd August 1928, I have the honour to state as follows:—

1. The position of Orissa is rather peculiar in the matter of Age of Consent. One of the most influential and intellectual communities namely the Karans do not give their girls in marriage before they have attained puberty. Child marriage is very rare amongst them. The age at which a girl is generally given in marriage is between 15 and 18 and it is often later where the heavy cost of dowry notoriously common to the community, is beyond the means of the head of the family. It is owing to this circumstance that in 1891 when Bengal made a tremendous agitation over the first Age of Consent Bill which raised the Age of Consent from 10 to 12, Orissa, her neighbour, boldly supported the Bill.

2. There are various other castes in Orissa amongst whom child marriage is only an exception as amongst the Karans.

3. On the other hand, child marriage is the custom amongst the Brahmins as well as other castes who are classed as the "Chhatris Pataks" which include the artisan and trading classes. In some of these castes (including

Brahmins of straitened circumstances) the bride fetches a price which varies generally in proportion to the difference between the Age of the bride and the bridegroom. The older the bridegroom, the larger the price which is called *Kanya-Soona*. The general custom is that after the marriage the bride goes to her husband's house where she stays only a week during which certain ceremonies are performed. She returns to her father's house on the 8th day and stays there. When she has attained puberty, the village astrologer is sent for and he makes a calculation as to what will be an auspicious time for consummation of marriage or rather what will be the length of the inauspicious time. This calculation is based on the hour at which puberty is attained and is governed by the relative position of the stars. The question of physical development does not enter into the calculation. Consummation of marriage is preceded by religious ceremonies. The occasion is known as *Punar-bibaha* or *Pooani*.

4. One of the evil consequences of child marriage in this part of the country is the large number of young widows.

5. I now proceed to answer the questions as far as possible. If required I shall be glad to give evidence before the Committee. Timely intimation will enable me to prepare myself.

#### Answers.

1—2. I have already explained the position of Orissa. The trend of enlightened public opinion is in favour of making an advance on the present law.

3. The crime of rape is rare in this part of the country. But seduction for immoral purposes is carried on to a certain extent which does not always come to light.

4. The advance made in 1925 has not interfered with the custom in this part of the country.

5. Puberty is attained generally between 14 and 16. It is earlier in case of well-nourished girls of well-to-do families.

6. Cohabitation before puberty is not common in this part of the country. It is common soon after puberty. In a recent case cohabitation before puberty in which a wealthy man was concerned caused laceration which ultimately brought about death.

7. The parents of a married girl are generally anxious so also the parents of the husband, that a grown up girl should not be kept in her father's house too long when she has attained puberty.

8. The only ceremony that is performed on the occasion of consummation of marriage in this part of the country is called *Punar bibaha* or *Pooani*.

9. I would consider attainment of puberty an indication of physical maturity but I would not certainly regard attainment of puberty itself as a justification for consummation of marriage for I have known girls attaining puberty at 12 or so. I am verging on sixty and my own observations in this part of the country are that proper physical development does not generally occur at less than 16.

10. I should consider that the proper age at which a girl in India is competent to give an intelligent consent to cohabitation is at least 16.

11. I have known many cases of early cohabitation tending to deterioration of health. I do not wish to disclose the identity of the persons who belong to respectable families.

12. The result of my observations is that a child born when the mother is very young, say 14 or 15, is both physically and intellectually weak.

13. Men of enlightened views are decidedly against child marriage and early cohabitation. But there has been no general awakening in this part of the country.

14. Women of conservative families are inclined to cling to family customs.

15. My long experience of criminal courts enables me to speak of the difficulty that is experienced in proving the age of a girl. Horoscopes where they exist are not always easy to prove. In many cases they are not genuine. The best evidence would be a birth certificate. Births are registered at Police Stations. But no birth certificates are issued and the register is preserved only a limited number of years.

16—19. No answers.

20. I am definitely of opinion that merely fixing a higher age of consent will not be so effective as legislation fixing the minimum age of marriage because once a girl is married it is not an easy task to control subsequent events. It is my belief that public opinion will rather abide by legislation fixing the minimum age of marriage than tolerate interference with internal family affairs.

21. I would rely more on education and social propaganda than on the penal law for our social advancement but the fear of the penal law is a help to the social worker in dealing with ignorant and conservative people.

### Oral Evidence of Dewan Bahadur SRI KRISHNA MAHAPATRA, Cuttaok.

(Patna, 14th January 1929.)

*Chairman:* Are you a member of the Bihar Council?

A. Yes.

Q. How long have you been a Member?

A. 2 years. I am a retired Superintendent of Police. I served in the police for 33 years.

Q. I understand that Brahmans and certain other castes are the only ones who have child marriages in Orissa.

A. Yes.

Q. And have Karans and other castes marriages from 15 to 18 and over?

A. Quite so.

Q. Which class predominates—those who have pre-puberty marriages or those who have late marriages?

A. The classes who have pre-puberty marriages, i.e., the Brahmans and Chhatris Patake are smaller than those who have late marriages.

Q. Do they consider that pre-puberty marriage is essential or it is only a custom?

A. They consider it a religious custom.

Q. You have stated in answer to Question No. 20 that public opinion will rather abide by legislation fixing the minimum age of marriage than tolerate interference with internal family affairs. Although you think those classes who perform marriages of younger girls are considerable, still you think there will be no opposition. You think they would not have any opposition to a law of marriage rather than to a law increasing the age of consent?

A. They will rather prefer a minimum age of marriage to an age for the consummation of marriage which will cause unnecessary interference from outside.

Q. You want a law something like Sarda's Bill.

A. Yes.

Q. What age would you recommend?

A. I think 14 would be more suitable.



Q. You yourself seem to think that 16 is the proper age for consent and you also think that physical development does not generally occur at less than 16. You mean that she will not be a healthy mother below 16?

A. Below 16 she will be a very poor mother.

Q. Therefore you keep 16 as an ideal and begin with 14?

A. Yes.

Q. Have you any reason to believe that the present law of 13 is broken by people who have child marriages?

A. I think that occurs in numerous cases.

Q. Do you think there is any method of making this law of the age of consent effective if we raise the age from 13 to 14?

A. Unless you have a wholesale registration of births and maintenance of records and then an agency that will check the age of marriage, it will not be effective.

Q. Do you know the method of keeping of registers here?

A. Yes. Births and deaths are registered but those registers are kept for a certain number of years and then they are destroyed.

Q. Would you therefore like that immediately a birth is registered a certificate should be given to the guardian or parent?

A. Yes. I would like that because registers are not kept for a long time.

Q. In villages how is the registration done?

A. In Orissa the village chowkidar reports it to the police station. If he does not report a birth he is liable to prosecution under Section 176 of the Indian Penal Code, i.e., omitting to discharge his duty.

Q. Is that so everywhere in Orissa?

A. It is a law in Bihar and Orissa.

Q. Do you believe that reporting is accurate?

A. As a police officer I know omissions do occur.

Q. Can you suggest anything to make it more accurate?

A. Chowkidars are quite illiterate people and one chowkidar has to report for 9 or 10 hamlets. He may very easily not find one or may neglect to report one. There have been numerous cases in which births had not been reported. In the municipalities it is an obligation on the parents or the guardians to report the births and the system is working efficiently.

Q. Will you make that compulsory in the villages also?

A. Yes.

Q. Do you think that that provision will be effective in the villages?

A. Yes, that will be more effective than leaving it to the chowkidar who is an illiterate person.

Q. Where you say that brides fetch a price, do you mean to say that the number of girls is smaller than the number of men and consequently there is a demand and so people pay more price for girls.

A. That may be the case in certain castes but another reason is that generally parents are not willing to give young girls to old men. So I have said older the bridegroom higher price he has to pay. That is nearly an established custom. I have known girls of six or seven being purchased for Rs. 50 or Rs. 60. The amount varies from Rs. 50 to Rs. 300 according to the means of the parties.

Q. Is that the system only among poor Brahmans?

A. Yes, among very poor people. Amongst the Karans there is no custom of selling girls.

Q. Can you from your experience tell us the condition of the mothers and the children in Karans who necessarily have marriage after a good late age and the condition of the mothers and children of those who marry

early? Do you think there is a difference in the health of the girl mothers of the Karans and the other people?

A. Yes. Those who marry late are much better and their children are better.

Q. As a class would you say that of Karans?

A. No. There may be deterioration of physical conditions due to various other causes.

Q. Are Karans the literary castes in Orissa?

A. They are Kaisathas.

Q. What is the function of these Brahmins of Orissa?

A. The Brahmins of Orissa have been famous in the past for their learning. They produced much useful Sanskrit literature but now their function is not the same as it was before.

Q. Are they agriculturists?

A. There is a particular class of Brahmins who are agriculturists.

Dr. Beadon: You say in the first paragraph that the age in which girls are generally given in marriage is between 15 and 18. Do you find that in these cases there is any great danger to the morality of the girls?

A. It is in some cases but they are not many. It depends on environments.

Q. We have been told by witnesses that if the girls are kept unmarried after 15 there is very great danger and that a large number of girls will go wrong. Here you say it is a custom to marry late. How many cases have you heard within the last 3 or 4 years of girls going wrong in this class?

A. In my whole experience I would say that the percentage is small. Parents take good precautions.

Q. In answer to Question 6 you say that in a recent case cohabitation before puberty in which a wealthy man was concerned caused laceration which ultimately caused death. Was this a marital case?

A. There was a girl who was taken by a wealthy person. She was in fact presented to him and he had forcible connection with her as a result of which she died. There was dispute about her age. One party contended that she was below 16 and the other party contended that she was over 16. She was in fact below 16; might be about 14.

Q. How long after connection did she die?

A. A few days after connection.

Q. What caste was that girl?

A. Karan.

Q. Was the accused tried?

A. Yes. In the first instance the case was hushed up. The police found it out but the case failed. The accused contended that it was his custom to bring girls with the consent of the parents.

Q. In answer to Question No. 11 you say "I have known cases of early cohabitation tending to deterioration of health". Can you give us details of one or two cases of girls without mentioning the names?

A. I have known a girl of about 12 giving birth to a child.

Q. When was that?

A. That happened two or three years ago.

Q. What caste was the girl?

A. She was a Khandayat.

Q. Was she fairly well off?

A. Yes.

Q. What happened to the girl?

A. For some time she suffered from great weakness and then there were complications which continued for sometime and her condition did not improve. She was a physical wreck; she is still alive.

Q. Did the child survive?

A. No, the child died a few days after birth.

Q. Do you know of any other cases or do you think that is an exceptional case?

A. There are some other cases like that. Such cases do occur in Orissa.

Q. How many cases can you remember within the last two or three years?

A. Some 14 or 15 are within my personal knowledge.

Q. Do the mothers usually in such cases fare well or do they suffer?

A. If the family is well-to-do, with proper treatment they come round, but when they are poor they succumb.

Q. You mean it depends largely on the medical treatment they get? The girls would not go through it unless well treated medically?

A. It also depends on the physical condition of the girl.

Q. Does it depend more on the physical constitution or on the medical treatment?

A. It depends on both.

Q. You say that children in such cases are generally weak both physically and intellectually. How many cases can you remember of children of young mothers?

A. Within my whole experience I know of 50 or 60.

Q. Were those children below the average or were they average?

A. They were below the average.

Mr. S. C. Mitra: In paragraph 114 you say women of conservative families are inclined to cling to family customs. So far as Orissa is concerned the custom is to marry late?

A. That is in certain castes.

Q. Do the ladies also in conservative families desire late marriages of their girls?

A. Yes, if that is the custom of the caste.

Q. In paragraph 20 you say that once a girl is married it is not an easy task to control subsequent events. Is it your inference that among the Brahmans consummation takes place soon after marriage?

A. No, that is not my inference.

Q. But the Brahman girls are married early.

A. Yes, but the tendency of the time is to increase the age.

Q. Is there an idea among the Brahmans that religion requires pre-puberty marriage?

A. They think it is a sin to allow a girl who has attained puberty to remain unmarried.

Q. Then why don't you suggest that in all classes instead of making a marriage law, consummation may be postponed and evil results can thus be avoided.

A. Among the Brahmans consummation takes place soon after puberty and the age of puberty differs according to climatic and physical conditions.

Q. In paragraph 1 you say that among the Brahmans puberty is attained earlier. There is a suggestion that in families where early marriages take place girls attain puberty earlier. Do you approve of that?

A. That is not my suggestion. I do not think there is any connection between marriage and puberty.

*Q.* As a police officer you suggest that these marital cases should be non-cognizable. Is that so?

*A.* I think so because once you place a social matter like this in the hands of the police there will be no end of it.

*Q.* What age do you recommend for extra-marital cases?

*A.* 18.

*Mian Mohd. Shah Nawaz:* Are pre-puberty marriages common in Bihar and Orissa?

*A.* Yes, among the Brahmans and Chhatris Pataka of Orissa.

*Q.* What is the percentage of pre-puberty marriages to the whole population?

*A.* It is considerable.

*Q.* Would it be half and half?

*A.* It will be a little less than half.

*Q.* You say that the wife is sent to the husband's house immediately after marriage. Is the child wife also sent to the husband's house?

*A.* She goes there only for religious ceremonies and she is brought back on the 7th or 8th day.

*Q.* In some cases puberty is attained between 12 and 13?

*A.* Yes.

*Q.* And the consummation takes place soon after puberty?

*A.* Yes, it is so but not in many cases.

*Q.* Can you tell me whether you have known of cases of marriage being consummated at the age of 13?

*A.* After puberty is attained they think they have a right to consummation.

*Q.* If the girl is injured do they make a complaint?

*A.* Not at all; they would try to hush it up.

*Q.* But don't the parents of the girl take it ill if she is injured?

*A.* No. Unless the parents send the girl she cannot go. As soon as puberty is attained the date of consummation is settled between the parents of the girl and the boy.

*Q.* Do you suggest that the age of marriage and consummation should be the same?

*A.* The minimum age of marriage should be 14 and the age of consent should be 16.

*Q.* Between this interval almost every marriage will be consummated if the wife is sent to the husband's house and you do not want any interference by the police. The parents do not consider it a crime and as soon as puberty is attained husband is permitted to have intercourse. Don't you think the law will be a dead letter?

*A.* That is a difficult position but at the same time society will be against police interference in such delicate matters.

*Q.* How would you make the law effective. Would you put the law of marriage and the age of consent at the same age?

*A.* No, 16 would be better age for consummation and 14 for marriage. If you leave the matter in the hands of the police you would make the Police more unpopular and society miserable.

*Q.* Even now there is a law and the police have a right to interfere if a husband cohabits with his wife below 12. Would you abolish that law?

*A.* That law is practically a dead letter.

*Q.* If we fix the marriageable age at 14 and penalise it, who is to make a complaint?

A. In cases in which the police are not empowered to take cognisance they go and lay information before the magistrate and if the magistrate thinks fit on the material placed before him he issues a process. At present the police are empowered under the Criminal Procedure Code to lay information regarding non-cognisable offences.

Q. In what manner the police should bring the marital cases to light. You have suggested one method; is there any other method?

A. If the law penalises giving girls in marriage before 14 that would mean an obligation on both parties. I think that will be a sufficient fear in the minds of both the parties. Then there are village panchayats. If the village panchayat scrutinises the birth certificate it will be in a position to know whether the law has been violated or not.

Q. In answer to Question No. 3 you say that seduction for immoral purposes is carried on to a certain extent which does not always come to light. You mean the girls are enticed away?

A. Girls are purchased for immoral purposes. There is a regular market for that. There is a market between Orissa, Calcutta and Rangoon.

Q. Are girls of tender ages often sold?

A. Yes. Sometimes money is paid to the mother and she sells the girl. Sometimes the girls are widows. In some cases a girl widow is glad to go and the mother is prepared to part with her. The traffic is more among widows than among unmarried girls. Unmarried girls are exported to centres where there is a great demand. These girls are sent to different parts of the country.

Chairman: You mean those widows among whom remarriage is not allowed?

A. Yes. Widow remarriage is permitted within certain castes of Orissa.

Mian Mohd. Shah Nawaz: Supposing you were to fix a law of marriage at 14 or 15, will there be any opposition?

A. Yes.

Q. How will the Brahmans take it? Will they persuade people to break the law and commit riots?

A. There will be agitation but I cannot say if it will be of any serious consequence.

Pandit Thakurdas Bhargava: The only fear is of journalistic criticism as they put it. That is all?

A. You can put it at that.

Q. At the same time you consider that a considerable number of the population will go against those who criticise the Government in that way.

A. The enlightened people will certainly welcome this change.

Q. Considering the number of enlightened people and considering the number of castes who practise late marriages you think they will be able to control the situation?

A. Yes. But that would depend on what attitude the most prominent Politicians of the day take.

Q. Supposing the Swaraj party and the National party in the Assembly advocate an advance and non-official members of the Assembly and Council of State are in favour of this advance, then your idea is there will be no agitation.

A. There will be no serious agitation.

Q. You suggested that a certificate should be given in the case of registration of births. Do you think that the register should be divided into 3 parts, one part should be retained by the village lumbardar, the other should be sent to the headquarter office and the third may be given to the person who makes a report?

A. I would advocate duplication of this record. It may be so arranged that the records may not be kept at one place.

Q. In Bengal there are village panchayats and there they exercise some sort of criminal powers and they have got their own office.

A. In Orissa there are village panchayats but their number is limited. In the near future there will be large number of village panchayats. Even in that case the Union Boards will be few and far between.

Q. But there is a patwari in every village.

A. There is no patwari system in Orissa.

Q. Who realises the land revenue?

A. The zemindar who is the owner of the village realises revenue from the tenants and he is responsible to the Government for payment of revenue.

Q. Do these zemindars keep registers?

A. The zemindar is not necessarily a resident of the village. He may be 10 miles or 100 miles away.

Q. Supposing a murder takes place who will report it?

A. The village chowkidar and over the chowkidar there is a dafadar.

Q. This dafadar may keep the register of births?

A. How can you expect a man getting Rs. 6 a month to keep a register accurately?

Q. There is a section in the Criminal Procedure Code under which the village chowkidar and village headman are bound to report certain offences to the authorities when they come to know of it. Would you place on them the obligation contained in Section 44 or 45, Criminal Procedure Code?

A. Yes, I would include this in that section.

Q. You know that there is a section which places an obligation on every member of the public to report such matters to the proper authority as soon as he comes to know of it. Would you like to place such an obligation in the case of breach of consent law?

A. I would rather include it in the Section relating to obligation on village chowkidar and village headman. I would also include the village panchayats because every group of villages has a panchayat.

Q. There is another difficulty. According to you the register is to be kept in duplicate only. Sometimes girls are married in a village 20 miles away and in their case the birth entry cannot be found in the village of their husbands. So there will be difficulty to find out the age of the girl.

A. So when the marriage of a girl takes place the age should be verified.

Q. So are you in favour of keeping a marriage register?

A. Yes it comes to that.

Q. And entry in the marriage register should be checked with the entry in the birth register?

A. Yes.

Q. You have been moving in these village—What would be the percentage of failures to report the birth?

A. On the whole I place the maximum at 2 per cent.

Q. And is that without any check on the village official?

A. There is a check on the village officials. The thana officer goes to the village and checks it. Then the sanitary department man—the vaccinator—when he goes to vaccinate children he checks it. He can find out which have not been reported.

Mr. Bhargava: There is no separate register for vaccination?

A. The vaccinators keep a register of persons whom they have vaccinated during the season.

Q. I understand there are two registers, the village chowkidar register and the vaccination register.

A. The vaccinator has got a register showing names of children whom they have vaccinated together with the name of the father and the age and such other information. But they are not records which are preserved.

Q. But anyhow you would like that this register might be compared by some authority?

A. I will not bring the Public Health Department into this affair.

Q. How will the failures to report be found out then?

A. The present agency is discovering omissions.

Q. What about the dowry system among the Brahmins? Is the dowry very heavy?

A. There is no heavy dowry among the Brahmins.

Q. Then it is only among the Karans and no other caste?

A. When they are poor the Brahmins on the other hand get money for their girls.

Q. They sell the girls to widowers or to unmarried men also?

A. To both.

Q. Do you mean among the Brahmins every girl is sold? What do you think is the percentage of those who sell girls?

A. No, not every girl. I could not give you the percentage. This "Kanyasona" system is common in the castes having child marriage. Families in straitened circumstances have recourse to this system.

Q. But this must be found in all castes?

A. No. Kanyasona is common among those who are in straitened circumstances.

Q. At present every person has got the right to report. Do you think this right is likely to be abused in the near future?

A. It may be abused in cases in which one wants to put his enemy into trouble. The Police get hundreds of anonymous complaints.

Q. But this can be said of every kind of offence.

A. Of some kinds of offences.

Q. So there is no likelihood of any abuse?

A. I am not sure of that.

Q. So you would like that the right of complaint may remain with everybody?

A. Yes.

Q. You have said that there are markets for the sale of widows and girls in Orissa.

A. There is traffic in girls.

Q. The present age in regard to cases under Section 366 is 16. You have said that you want to raise the age of consent to 18. Would you like to raise the age under Sections 363 and 366 also to 18?

A. I would keep it as it is.

Q. Why?

A. To make the law tight.

Q. But if it is 18 the traffic would be prevented all the more?

A. Well, let there be a corresponding increase there also.

Q. The Brahmins will be agitated if you raise the age of marriage to 13 or 14. Why do you raise it to 14 only therefore? Why not go to 16?

A. I would like to make the burden of the parents light earlier.

Moulvi Md. Yakub: Do you know anything about the conditions of Mohammadans in your part of the country? Can you tell us at what age do they marry their girls?

A. My knowledge is not very intimate but my idea is that there is no child marriage amongst Muslims in Orissa generally.

**Q.** Has any case of tyranny by the police in case of marital relations ever come to your notice during your long service?

**A.** None.

**Q.** It appears in your part of the country the police have done no mischief in such cases.

**A.** No.

**Q.** Then why are you afraid of the cases being given to the police in future. This offence has all along been cognizable below 12.

**A.** Below 12 I am not against police interference.

**Q.** You want to retain the existing law as it is?

**A.** Even if we retain it, it will remain a dead letter. It has produced no effect one way or the other. No cases are reported.

**Q.** What is the reason, is the police negligent?

**A.** It is difficult for the police however vigilant to find out such offences which are committed within the four walls of a house and everybody is anxious to hide them. Unless the police have a detective in each family such cases cannot come to light.

**Q.** Is the practice of selling girls also prevalent among the Mohammadans?

**A.** I have not known any such cases.

**Q.** How long have you been in police service?

**A.** 33 years.

**Mr. Kanhaiya Lal:** I should like to know whether you would be prepared to make marital offences cognizable, if we require that the enquiry is to be made only by the higher officers of the police like the Deputy Superintendent or the Circle Inspector?

**A.** Yes, I perfectly agree.

**Mr. Bhargava:** In these cases does it not happen that the enquiry is made by the subordinate officers and is attributed to the higher officers?

**A.** If the Superintendent is a European, he may depend upon his Indian subordinate in such cases. I think if the Deputy Superintendent who is generally an Indian makes the enquiry I would make the offence cognizable.

**Mr. Kanhaiya Lal:** As a further safeguard would you recommend that the trial should not proceed and no warrant or summons or notice should issue till the magistrate has made a preliminary enquiry into the case and satisfied himself that a *prima facie* case has been made out so that all false or malicious cases might be eliminated?

**A.** That would be a very good safeguard and that will considerably lessen the opposition to the measure.

**Q.** At present cases under 12 go to the Sessions and above 12 go to the Magistrate. In order to expedite the trial and induce greater public confidence would you recommend that all these cases should be transferred after the preliminary enquiry to a matrimonial court consisting of a magistrate and two non-officials?

**A.** That will be much better than the present method.

**Q.** Should these non-officials be associated as assessors, or jurors or as co-judges, taking part in the assessment both of the guilt and the sentence?

**A.** If they are to sit, they must sit as jurors and not as assessors.

**Q.** Not as co-judges?

**A.** I would associate them as jurors, because the judge has the liberty of referring the matter to the High Court, if he differs from them. As assessors they would simply be ornamental figureheads.

**Q.** In a domestic affair like this would the co-judges not inspire greater confidence by reason of their knowledge of the customs and conditions of the country?



A. I have not had experience of such Courts in districts and that is why I am a bit diffident.

Q. Would you recommend that these cases might be allowed to be compounded with the sanction of the court, so that in suitable cases, if they are withdrawn good relations might be restored between the husband and the wife?

A. What is the use of this law if the offence is made compoundable? I think 99 per cent. of cases will be compounded.

Q. But compounding need not be allowed except with the sanction of the court. If there is a serious injury and the girl is of a very tender age the magistrate may disallow it.

A. It may be allowed only in exceptional cases and with the permission of the court.

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**Written Statement of a Sub-Committee of the Bihar and Orissa Council of Women, submitted by Mrs. T. S. MACPHERSON, Honorary Secretary.**

I enclose herewith the findings of the special committee appointed by the Bihar and Orissa Council of Women to deal with the questionnaire issued by the Age of Consent committee.

The committee we appointed consisted of—

- (1) Mrs. Willmore (Chairman), A trained masseuse, who has had great experience in Zenana hospitals, chiefly in a voluntary capacity as wife of the Civil Surgeon of various districts. Colonel Willmore is now Inspector General of Civil Hospitals here.
- (2) Dr. Miss. Bennett, M.B., Ch.B., Edin., of the Duchess of Teck Zenana Hospital, Gulzarbagh.
- (3) Mrs. Francis, L.M.P., Lahore, who has a large practice among Indian ladies in Patna.
- (4) Mrs. Duncan White, C.M.B., in charge of the Child Welfare and Maternity work in Patna City.

We hope that their findings will be helpful.

The Sub-Committee of the Bihar and Orissa Council of Women feel that detailed answers to the questionnaire are impossible—(1) because at this season of the year it is almost impossible to collect representative opinion, (2) because in many cases the questions can only be answered from a statistical or legal knowledge which cannot be obtained at short notice.

We therefore consider that a general summing-up can best convey our views.

We believe that all thinking and enlightened people are unanimous in their desire to put an end to child marriage and this especially refers to women. Equally we believe that, (in answer to question 12), early consummation is largely responsible for maternal mortality. We think that raising the age of consent will not materially alter this trouble, until the long-standing prejudices and superstitions of the very poor and un-enlightened classes have been got over. We believe that raising the age of consent will not make human feminine life any less cheap. The prejudices spoken of are:—The pundit's opinion and orders, the astrologer's opinion and orders, the fact that the older the girls are at marriage, the higher must be the marriage portion, and these things are more than any law. Poor people marry their girls young—(1) to sell them cheaply, (2) to avoid having the expense of keeping them. We believe that *cause* should be treated rather than effect; and also that it would

be better to strengthen and enforce existing laws than to make new laws which would tend to encourage the falsification of age, and other evasions, and do little to help the situation.

We think, therefore, that the penalty for breaking the existing law should be imprisonment, with as long a term as possible, without option of fine, and regardless of position or importance. At present fines do not mean much to a people who are used to being in debt, and marriage portions are such, that nearly all the poor classes are in debt, all or most of their lives: and fines tend to pride rather than shame. If every offender went to prison, the offence would be much more worth considering—localities would soon begin to feel, and feeling, would understand.

Publicity, shame, and disgrace would begin to make themselves felt, and the *cause* would begin to be treated.

The Muslim religion already gives the age at 18 for girls and 22 for boys, and educated Hindu opinion is undoubtedly in favour of the change.

Example and teaching will bring about a natural adjustment in time, if the poor and unenlightened ones have been shown, not by fines, not by homes for injured and ruined girls, but by rigorous punishment which they will feel and understand, has taught them.—We believe that whether or not the age of consent is raised, it will be of little help to the children, unless punishment is properly meted out.

**Oral Evidence of Mrs. T. S. MACPHERSON, M.A. (Edinburgh),  
Honorary Secretary, Bihar and Orissa Council of Women, Patna.**

(Patna, 4th January 1929.)

*Chairman:* I understand this opinion that you have given is on behalf of the Bihar and Orissa Council of Women.

A. It is really the result of a sub-committee of four ladies. It would hardly be the opinion of Council of Women because we had not amongst our activities any Committee suitable to deal with it. However on two occasions the Council has debated subjects akin to this, for instance Hari Singh Gour's bill. I think it was three years ago and more recently Sarda's bill was debated upon.

Q. What is the decision arrived at about Sarda's bill?

A. Before I mention the decision I should like to explain one thing. Our Council is composed of about 50 per cent. English ladies and 50 per cent. Indian ladies and on the occasion of the debate the English ladies definitely decided that it would be better for them to take no part in the debate because they felt this was a matter concerning the Indians. The vocal element, the highly cultured ladies were wholly in favour of the bill but I doubt whether the Purda ladies who are members would endorse that.

Q. Have you ever had occasion to talk to these purda ladies and the more orthodox ladies?

A. I have come in contact with them on many occasions during my work.

Q. What is their feeling?

A. I think on the whole they rather feel that they would leave the matters as they are. On the whole they would deprecate any change. On one occasion when our Council was having a debate a suggestive hint was given that they feared that legislation might mean intrusion in the homes. That seemed to be their idea.

Q. But what would they think of a bill like Sarda's. That is not an intrusion. That only fixes the minimum age of marriage.

A. Probably they feel in the same way. They fear any change in social customs and they fear legislation might mean intrusion. Among the Bhadralog purda is very rigorous.

Q. Do you think they realise the evil consequences, if any, of early maternity?

A. I think, they do. But there are so many things fighting against any change that they fear to make it.

Q. Do you think there are a certain number of orthodox ladies who would feel strengthened if the law is passed as against social tyranny or ostracism? Then it may be permissible to override custom.

A. I think, it might. But I think far more good will be done by education than any legislation. They feel that spread of education would lead automatically to a rise in the age of marriage. Our Council of Women are trying to do that by spreading ideas regarding Child Welfare Maternity clinics and giving lectures on hygiene and by various other methods of that kind.

Q. The Council has not given any opinion on Question No. 20. How is that?

A. Yes, they have not said anything about that. My own opinion is that if there is legislation, the age of marriage and the age of consent should be the same.

Q. But would you prefer to have law of marriage?

A. I should think that would be better. But certainly the age for both must be the same.

Q. What do you think is a good age for extra-marital cases?

A. I am afraid I do not consider myself capable of suggesting any definite age.

Q. But would you consider it advisable and expedient to fix a higher age for consummation by strangers with unprotected girls?

A. I think it would be more effective to have the same age for both. I think it complicates matters if you have two ages.

Q. You have suggested a severe punishment as a remedy to make this law felt by the people. At present the punishment below 12 is 10 years and over 12 and below 13 which is at present the age for marital cases it is 2 years or fine or both. This suggestion has been made after realising that?

A. I have not personally made that suggestion. I of course know about it.

Q. What is the meaning of severe punishment?

A. I think the idea is that there should be no fine because that is differentiating between the rich and the poor and there should be rigorous punishment so that the law might be respected.

Q. The idea of fine is that there may be cases of varying degree of delinquency. In some cases there may be very extenuating circumstances and the magistrate may exercise the discretion and give fine only or the boy may be young and may do something very foolish. For that reason the fine has been kept. Would you rather have imprisonment for all?

A. Yes, that is the feeling.

Q. Do you yourself believe that early maternity as it exists in Bihar and Orissa is an evil?

A. I do.

Q. Do you think the evil is sufficiently wide enough, spread amongst all the communities making possible for us to take action or is it only confined to a very small number of people?

A. I think it exists among the larger number of the community. It is the smaller number who are exempt from it. There are the educated ladies who are practising late marriage without any compulsion.

**Q.** But their number must be very very few.

**A.** Very few.

**Q.** You think there is a very large number of people who are affected by this evil.

**A.** It is only among the Aborigines in this province that the evil is not felt. Amongst the orthodox Hindus it is widespread. Among the Aborigines there is a fairly large Christian community and possibly also amongst the depressed classes it may not be so widespread.

**Q.** Are you referring to Santals?

**A.** I know more about Mundas and Oraons than Santals.

**Q.** Would you say that these people have post-puberty marriages?

**A.** I think I am right in saying that.

**Q.** There the evil must be less?

**A.** They are a much more virile people.

**Q.** Do you think there is a certain amount of sterility among the women of these people?

**A.** I am afraid I can't say.

**Q.** Do you know whether there is an infectious disease among the women?

**A.** I have not heard about it. I have no professional experience.

**Q.** We were told that in Punjab amongst these hill-tribes the women are sterile on account of venereal and infectious diseases. I was wondering whether this was the case here also.

**A.** I doubt it very much. So far as my knowledge of these tribes goes I don't think they have that sort of disease.

**Dr. Beadon:** We have been told that these tribes although they have late marriages practise pre-nuptial relations?

**A.** I have not heard anything very definite about that. I have heard that on certain festivals there is some licence but I do not know whether it is widespread. I am not in a position to say anything definite.

**Q.** You are very anxious that there should rather be imprisonment and no fine. Don't you think that would cause a great deal of hardship to women?

**A.** That is likely to be a burden on the father and imprisonment on the other hand would be a sharper lesson than any fine can be.

**Q.** You think one or two wives would suffer but others would benefit?

**A.** Yes, I think so. A majority would be benefitted.

**Q.** You say in answer to question No. 12 that early consummation is largely responsible for high maternal mortality. Have you known any case in which there has been trouble after early consummation? Do you know any case in which either the mother has died or the child has died?

**A.** I have come across cases. We have got several committees and one of them is the Hospital committee. I am on it. I visit the hospital weekly.

**Q.** Won't you mind giving us details of one or two cases?

**A.** I am afraid I can't do that. We do not pay professional visits and do not solicit professional details.

**Mr. Nehru:** In your statement you have said "child-marriage is responsible for high maternal mortality". You have left out infantile mortality. Is it accidental or intentional?

**A.** I think want of after-care and lack of knowledge are mainly responsible. In the case of a very young mother that tells badly on the infant.

**Q.** Do you consider that the very fact of a young mother giving birth to the child is responsible for making the child weak or short-lived?

**A.** Perhaps not so much. But certainly ignorance has a great deal to do with it in the case of a very young mother.

**Q.** Have you seen the babies of young mothers?

**A.** I have seen them both in the General Hospital and in the Teck Zenana Hospital.

**Q.** Do you find them at the time of birth just as healthy as the babies of older mothers?

**A.** I can't say that. My experience is necessarily limited in this respect. Once a week only I go to the hospital. It is only recently that maternity cases have come in any considerable numbers in the General Hospital.

**Q.** How long has this Council of Women been working?

**A.** For 3½ years.

**Q.** What are its activities?

**A.** We have a Child Welfare Committee, a Hospital Committee, an Education Committee, Blind School, Prevention of Cruelty to Animals, Leper Committees, etc.

**Q.** Are you running any schools?

**A.** We do not run any schools. Through the Education Committee we keep in touch with teachers.

**Q.** Did any purda ladies attend the meeting of the Council referred to by you? Did they definitely commit themselves to any opinion either for or against the bill?

**A.** They did in that way that when asked to hold up their hands some of them did. Whether they did so definitely realizing what they were doing I don't quite know.

**Q.** Have you ever asked them a plain question in this connection privately?

**A.** I think they are inclined to the view that they do not want any interference in their homes.

**Mr. Mitra:** Is there any Mohammadan lady amongst your members?

**A.** Yes, we have several Mohammadan ladies. Lady Imam is our Vice-President.

**Q.** In your statement you say, "the Muslim religion already gives the age at 18 for girls and 22 for boys". What is your authority for that?

**A.** I can't say whether there is any authority for that. A Mohammadan member said so. Mohammadan ladies on our Council certainly practise late marriage.

**Q.** From your experience can you tell us if there is any difference in the age of puberty in India and in Europe?

**A.** I am not in a position to say that.

**Q.** You are here in India for how many years?

**A.** I came in 1902. But I have gone to and from England many times since then. I have been in many districts in Bihar.

**Q.** Can you tell us from your experience that if the girls are not married soon after puberty there is a risk of their losing their morals?

**A.** I am afraid, I can't say.

**Mr. Shah Nawaz:** Will you please tell us whether your Council of Women consists of both European and Indian Members?

**A.** We have about 200 members and there are roughly 50 per cent. Europeans and 50 per cent. Indians.

**Q.** All ladies?

**A.** Yes.

**Q.** What is the opinion of the Indian ladies regarding early marriage and early consummation?

**A.** The educated Indian ladies of the Council are all very definitely in favour of an advance in the age of marriage and they practise late marriage.

Q. And what about the uneducated women?

A. The orthodox purda ladies would rather have early marriage and they marry their daughters young.

Q. Have you got ladies of all castes as members of your Council? Have you got Brahmins, for instance?

A. Yes. We have Brahmin ladies and we have Brahmo ladies.

Q. What is the opinion of the Brahmin ladies?

A. They would be a little bit reticent in expressing their opinion.

Q. Will they welcome the change?

A. I doubt it.

Q. In your statement you say that poor people marry their girls young to settle them cheaply. Would you give details?

A. I am afraid I can't say. The memorandum was drafted by a sub-committee and it was handed over to me as Secretary.

Q. What do you think should be the marriageable age in this part of the country?

A. I would not like to commit myself to anything about this.

Q. What do you think would be the suitable age? Do you think 15 would be a suitable age?

A. It is very difficult to commit oneself in a matter like that. Girls mature about that age.

Q. Would you say it should be between 15 and 16?

A. I am afraid, I can't say.

Mr. Bhargava: Has this memorandum been placed before your association?

A. No, it has not been.

Q. According to this memorandum early marriage is attributed to two causes, poverty and ignorance. Do you also agree?

A. Personally I should not agree, but I don't know what the opinion of the Council would be.

Q. Then the recommendation is that this poverty and ignorance should be cured by sending the people to prison. You do not agree even there?

A. That is a rather difficult question. If the law is passed the penalty must be sufficiently strong to make it respected. That is the reason for our suggestion of imprisonment.

Q. The memorandum says that the cause should be treated. If the cause is poverty surely it cannot be treated by sending the people to jail. So far as ignorance is concerned that also cannot be cured by sending the people to jail.

A. The example would be helpful as a deterrent. The real positive part of it however is the spread of education which we firmly believe in. In our Council's opinion spread of education would be more helpful than anything else can possibly be.

Q. If every case is enquired into and if this early marriage is very common and if every husband is sent to jail many homes will be ruined. Do you not think that under the present circumstances at least for the first few years fine should be imposed instead of imprisonment?

A. Your question presupposes that legislation is the best thing. I am not quite sure whether our Council agrees to that. We rather prefer an educational programme than a legislative programme.

Q. But at present there is legislation on this point and if there is a husband who goes to his wife when she is below 18 he is liable to be sent to jail and the recommendation is that he should be sent for a longer term of imprisonment.

A. Not longer than at present. The recommendation is that the law as it stands at present is perhaps not sufficiently rigorously administered and if the law were rigorously administered and deterrent examples were made of some husbands the practice might be stopped.

Q. However, if this custom is attributable to ignorance or poverty, I understand, you would like that the person may not be sent to jail but he and his parents and the society should be educated.

A. We should prefer to have an intensive educational campaign everywhere not merely through the schools but through clinics of every description, through lectures and propaganda of every description. We should prefer that to legislation.

Q. Then the memorandum says that the fines do not involve any sort of shame and disgrace to the people?

A. That is the feeling. People are loaded with debt. The poor class of the people are already encumbered with debt and a little more will not mean anything to them and to the wealthy it does not matter at all.

Q. Has your Council come across a case in which a person was only fined and no imprisonment was given?

A. Certainly, but as a Council we have not dealt with any such case.

Q. Have you personally heard of any case in which the husband was only fined?

A. I am not a magistrate and I don't come across such cases.

Chairman: What he means is, have you read in the papers for instance of any such case?

A. No, I have not.

Mr. Bhargava: Do I understand then that this recommendation has no basis?

A. I think that recommendation has a very real basis. The Committee of experts whom we appointed were lady doctors who had practised in Patna for many years and in other parts of the country as well.

Q. So far as the medical ground is concerned the recommendation may be very good. But so far as this question of fact is involved that persons do not care for fine, it can only be justified if there is material for that.

A. I think the general ground is the large amount of debt that already rests on the people.

Mr. Yakub: In the beginning of your statement you say, "we believe that all thinking and enlightened people are unanimous in their desire to put an end to child-marriage" and further on you say "raising the age of consent will not materially alter this trouble". What remedy do you suggest to put an end to child-marriage?

A. Our experience is that an educated lady will see it more right to delay the marriage of her daughter. We stress education rather than anything else.

Q. Is it your opinion that the existing provision of the Indian Penal Code should remain as it is and that every effort should be made to give education to the ladies?

A. Yes. That I would say is my personal opinion and whether my Council would be committed to that I can't say.

Q. You are not aware of the opinion of your Council.

A. On that point I do not know. We have not actually discussed it. We have had a discussion on various marriage bills and on both occasions the Indian ladies conducted the debate entirely themselves. The very advanced and highly cultured ladies whom we have as members are all in favour of later marriage.

Q. In the beginning of your statement you say, raising the age of consent will not materially alter this trouble that is, you do not want an

amendment of the existing law. Later on you say it would be better to enforce the existing law. How do you reconcile these two statements?

A. If the existing laws were rigorously enforced and you have sufficiently rigorous punishment you may not require any further law.

Q. By legislation, I take it, you wish to create public opinion and a sufficiently deterrent punishment may act towards that. You probably know that at present the law is if a husband has intercourse with his wife if she is below 13 the husband is liable to certain punishment. We want to know your opinion on this specific point whether you would raise the age from 13 to 14 in the Indian Penal Code.

A. The age of marriage and the age of consent, our Council say, should be the same if there is new legislation on this point. It is better to make the two the same so that matters may be less complicated.

Q. Are you in favour of fixing a minimum age of marriage? At present girls of 2 and 3 are married?

A. My personal opinion is that it would be feasible to fix the minimum age of marriage.

Q. By means of legislation?

A. Yes.

Q. You also think it would be better to make an amendment in the Indian Penal Code and raise the age of consent from 13 to 14?

A. I would not say that. I would not care to commit myself to any definite age. If you legislate and fix the minimum age of marriage the age of marriage and the age of consent should be the same.

Q. Do you agree with the views expressed in this memorandum?

A. On the whole, I do.

Mr. Kadri: May I know whether any Mohammadan lady was a member of the Committee you appointed for this purpose?

A. I don't think so. Lady Imam is our Vice-President and the other Mohammadan ladies are all Purda ladies.

Q. So neither were the purda ladies consulted nor are you in a position to say what their feeling is in this matter?

A. They were not consulted about this. But on two occasions we had a discussion when Mohammadan ladies were present and on one of these occasions certainly a Muhammadan lady took part in the discussion.

Mr. Kanhaiya Lal: What do you consider to be the safe age for consummation of marriage?

A. I am afraid I am not in a position to say. I can't make any recommendation.

Q. Can you tell us what do you consider to be safe age for maternity?

A. I am afraid, I can't.

**Written Statement, dated the 4th September 1928, of Pandit ANANTA MISRA, M.A., Lecturer, Government D. S. Sanskrit College, Muzaffarpur.**

1. The law has practically been kept out of any public notice, being too weak to affect any reform in the prevalent abuses, but has certainly diminished crimes of that nature to a good extent.

2. The circumstances that justify—

(1) retaining the law of the age of consent as it is, are:—

(a) That the force of the present law is not publicly so vehement as to interfere with the social or religious affairs of the



people. Hence such communities, or castes or classes of men as have blind faith in the injunctions of Dharmashastras do sometimes violate it without fearing any intervention of police, for such communities of men as like to lie long in the depth of the old but brilliant darkness let the law pull on as it does. They say that any further penal legislation and that advancement in respect to the present law of the age of consent may subject them to various difficulties in getting their children married and may further fetter the socio-religious freedom of not only all individuals but also of any such communities as have all along so far as possible preserved, may tried to preserve, their traditional and long-established customs and religions in obedience to some or other of the different religious authorities or "Dharma-sastras".

If, therefore, the Government need not interfere actively with the private concerns of socio-religious nature of her subjects, the power and effect of the present law of the age of consent is enough to educate public opinion gradually in this direction and to bring about a reformation in such abuses.

(2) But the circumstances that justify making an advancement in the present law of the age of consent are:—

- (a) taking the task of building a fine Indian nation to be one of the religious duties of the ruling power;
- (b) considering public welfare to be the primary object of government legislation;
- (c) disbelieving and mistrusting any automatic awakening of the mass towards these abuses at a near future; and
- (d) reviewing the diverse elements constituting Indian nation, different castes, communities and classes with variegated social and religious sentiments and traditions, one can't but think it impossible for any educational or social propaganda to kill this despicable evil out of the Hindoo community so soon as expected through some penal legislation of a healthy and convenient nature.

3. Cases of seduction are very frequent, and of rape outside marital state are very rare but the same within marital state is not at all reckoned as a crime and hence the last one come to our notice very frequently. And neither the law nor its amendment made in 1925 has any effect in preventing rape more particularly within marital state than extra-marital one—but in reducing it—the dread of law is felt to a good extent by offenders. In my opinion, the education of the public opinion and a systematic propaganda of social reformatory measures will be more effective in killing out the evil than any penal legislation in this respect. Because who goes to care a law when animal appetite is to be appeased and guilty pleasure to be enjoyed in the name of social traditions or of religious injunctions. The existing law has no force—neither any further legislation to bring about a reform will have any—if side by side, with the behests of law public mind be not educated to discourage and demolish private crimes of rape more in marital cases than in extra-marital ones—the latter being an uncontrollable offence committed voluntarily by plunderers and thieves of feminine beauty.

4. Has not been effective by any of the three ways given in the questionnaire.

Side by side with educational and social propaganda which alone may take centuries to turn orthodox Hindoo minds towards some reconstruction of a healthy nature, penal legislations fixing the minimum age of marriage for girls at a stage guaranteeing their physical development to be complete for an intelligent and willful cohabitation, shall be more effective

in cutting at the very root of all rape cases within marital state and bringing about a speedy reformation of abuses that eat into the very vitals of the Indian nation. Because Sastriya injunctions and traditional customs lose themselves before penal legislations of the ruling power as evident from the example of the old system of "Sati" in India.

5. In our part of the country, viz., Mithila or Tirhut, the girls attain puberty usually between 11 and 13. But this differs in various castes, communities or classes of society. The higher orders living commonly on daintier dishes have an early attainment of puberty while the lower ones, labouring in the teeth of penury, have a late attainment of puberty say at 13 and above.

6. Cohabitation under all the three circumstances indicated in the questionnaire is more or less common in all the classes of people but chiefly among the higher classes. But such cases scarcely come to court being partly connived at or silently borne by court-fearing public.

7. So far as the existence of the practice of early consummation of marriage just after puberty is concerned, Mithila or Tirhut attributes it to some specific religious injunctions which may be better consulted in the answers, from other professors of Dharm Sastra in this Dharm Samaja Sanskrit College. But penalty for the breach of those injunctions does not also seem to be so severe as to justify its continuation against higher objects in view to be gained otherwise.

8. In my part of the country, "Gaona" and Garbhadhan ceremonies are two different things, though the former may be philosophically traced to be the degraded form of the latter sanskrit word. "Gaona" is usually performed during a period ranging from 1 to 5 years after the date of marriage in case of higher castes like Brahmans and Kshatriyas and from 3 to 9 years in case of lower classes in which matrimonial, usually takes place at a very early age, at the 4th or 5th, while Garbhadhan, though enjoined by the Sastras as one of the ten necessary Sanskars (purifications) for Brahmans, but being obscene in its nature, has now died out of the Maithil Brahma Society where it was formerly practised. In our part Gaona is traced from the Sanskrit word *Gam Nam* which means going or removing of the bride for the first time from her father's house to that of her husband. Thus Gaona is entirely a social custom while Garbhadhan a religious one.

Therefore, performance of Gaona ceremony is alone in vogue among all classes of people. But in this respect it should be observed that marriage among the lower orders takes place at too early an age for the couple who physically develop so differently till the time of their second marriage or "Gaona" in our sense—that very frequently one of them stands practically a deplorable match for the other consequently resulting in either a life-long discontent and disaffection between the two or in adding to the vast number of "shameful faces" in India. However, in this respect, Gaona may coincide with but can't be anterior to the consummation of marriage which is never possible when the married couple barely meet conjugally before the performance of Gaona.

But such is not the case with Brahmans who very frequently pay visits to brides residing at their fathers' house.

Among the Kshatriyas, marriage and Gaona are both coincident being both helplessly performed at an advanced age which more than justifies the time of cohabitation. Hence only Brahman community is an exception where consummation of marriage does not coincide with but is anterior to Gaona which in its turn is quite a different thing from Garbhadhan.

In no community does the question of puberty arise when a husband demands Gaona of the bride from her guardians. But it is an entire look-out of the matrons of the house whose counsels in this affair generally rule supreme. Hence Gaona usually takes place after years of the attainment of puberty in case of Kshatriyas, Vaisyas and Sudras, but of the Brahmans, Gaona may be performed even before the girls attain puberty.

because this last although the highest in its order class of men treats weaker sex no better than an object of sexual pleasure for which they are given their husbands—of course in the beginning of their youth.

9. The attainment of puberty depends upon the vital strength of the bride generally as evident from the fact that sometimes slender and weakly physique has an early puberty but bears firm healthy fruits. But in most cases, puberty is observed in healthy bodies alone and if the health permits, puberty is a sufficient indication of maturity to justify consummation of marriage.

However, to refrain from cohabitation for 2 to 3 years after puberty will necessarily bring out a better result in respect to the health of the progeny than to indulge in cohabitation soon after it.

10. The age at which a girl attains puberty and gives an intelligent consent to cohabitation varies in different parts of India more in accordance with the nature of the diverse climatic conditions of the place where she breathes than in accordance with her bodily constitution which also plays a prominent part in this respect. But generally in our part of the country, girls begin to give intelligent consent to cohabitation with a due realisation of consequences, just a year or two after puberty which ranges between 11th and 13th of her age as stated before.

11. I have come across many cases of this nature but can give the details of age and injury sustained in the case of only one which has very recently occurred. The age of the bride was only 12 years while that of the bridegroom sixteen. The result of the cohabitation was a disfigured and defaced male issue—that could not survive more than a few days. The mother has lost her health for ever and the poor youthful husband seeks out another wife to add to her further misery.

12. Yes, certainly.

13. The law or its amendment made in 1925 has scarcely gone to develop public opinion in our part of the country. Of course, the intelligent sections of different communities have to some extent realised the bad results of early marriage and its early consummation. But still they will not favour an extension of the age of consent, biased as they are against all reformatory affecting any deviation from or change or alteration in the injunctions of Dharma Sastras with respect to their long-established customs of marriage which they hold most sacred.

But it is confined only to the higher castes of Brahmins. The lower orders have no practical knowledge of any law or its amendment existing at present in marital cases although stray cases of extra-marital rape or seduction as brought to the notice of courts have sometimes been observed and feared by the law-abiding public.

14. Women in our part of the country do never favour early consummation of marriage for their children although sometimes a scattered few of them do like to see their children married at an early age with the bare desire of satisfying themselves at the sight of a baby-couple but entirely without and perfectly ignorant of the knowledge of its consequences.

15—16. Difficulties naturally arise in determining the age of girls in connection with offences under Sections 375 and 376. But these can only be removed or at least minimised by *fixing the minimum age of marriage*. But in this connection, the dreaded police should have no hand. Respectable-honorary local bodies should be appointed and entrusted with the task of giving due sanction to marriage of girls and boys under their limited jurisdiction after making local enquiries of a civil nature in each case.

17. There is a conspicuous difference in the very nature of the both marital and extra-marital offences, as the former seems to be void of any motive to harm or violate the chastity of girls while the latter goes to prove an encroachment upon and plunder of her right and property who stands its objects. In one case, the offender is a civil thief while in the other, he is a highway robber. Hence there should be some difference in

the offences of both kinds and in their trials. The maximum punishment as laid down in Sections 375, 376 and 376A is enough for the both marital and extra-marital cases. Because heavier penalization will no better bring about the desired object than the existing one does.

18. Yes, I would, and in my opinion, the trials of both kinds should be differently conducted through the Government courts in extra-marital cases and through honorary local body to be duly vested with the power the body made of respectable personages of that neighbourhood where the case may originate.

20. No, in my opinion, the latter course seems be more effective because I see that penal legislation fixing the age of consent, as it exists now, has been and is being very frequently voluntarily violated particularly in marital cases.

But this alternative does not seem to be in consonance with the public opinion here as they never like any Government hand be laid to their private social concerns.

21. I would like to have both the measures in parts, jointly adapted to secure the objects in view. But I must give preference to the means of education and social propaganda and to the turning of public opinion in this direction by some local organization of a healthy nature rather than to the means of strengthening the penal laws which may put the public to various kinds of formal difficulties in and obstacles to getting their children married which normally stands a problem for all classes of parents in India.

(This document is submitted in addition to a second one jointly with the principal's opinion and formally forwarded by the office, so that it may throw some light on the state of affairs in my part of the country.)

### **Oral Evidence of Pandit ANANTA MISRA, M.A., Lecturer, D. S. Sanskrit College, Muzaffarpur.**

• (Patna, 4th January 1929.)

*Chairman:* Are you a Lecturer in the Sanskrit College, Muzaffarpur?

A. Yes; I am a Lecturer in English.

Q. To what caste do you belong?

A. I am a Mythila Shrotri Brahmin.

Q. May I take it that the gist of your evidence is that you would rather have a law fixing the minimum age of marriage than a law of the age of consent because the latter is ineffective?

A. Yes; a marriage law would be better. Otherwise I do not find any remedy.

Q. What age would you have for marriage?

A. I do not want more than 14 at present.

Q. And for boys? }

A. 18.

Q. You say that the law is very frequently and voluntarily broken particularly in marital cases. Do you think it is confined to any particular class?

A. Yes; it is confined to the Mythil Brahmins.

Q. Do you mean to say that amongst them there is a large number of cases of consummation before 13?

A. I cannot give any definite opinion on the point, but I feel that there has been a breach of the law as it at present exists. I hear very often of such instances.

**Q.** Is it only amongst the Brahmins?

**A.** It is found amongst other classes also, but it is more frequent amongst Brahmins.

**Q.** Do all Brahmins have pre-puberty marriages?

**A.** Yes; they consider it essential.

**Q.** What is the period that generally elapses between puberty and consummation amongst Brahmins?

**A.** It is generally soon after puberty.

**Q.** Do you think that this law of marriage would not be in consonance with public opinion here?

**A.** Yes; it would not be in consonance with public opinion, because the public fear that there will be strong Government action.

**Q.** Is not the evil confined to the Brahmins only?

**A.** But the law cannot be made for one section of the society alone.

**Q.** Are there not post-puberty marriages amongst the other classes? How will the law affect them?

**A.** The other classes will also be affected, but they will not mind, whereas the Brahmins will mind because they will have to go against the Dharma Sastras.

**Q.** Do you think that early marriages exist amongst people because of their poverty, or do you think it is due to religious custom?

**A.** It is due to social and religious custom?

**Q.** Is there Kanya Sona amongst the Mythil Brahmins here? Do they sell their girls for money?

**A.** There is such a custom amongst the lower order of Mythil Brahmins. But I think that ought to be reformed by social propaganda.

**Q.** Do you think that a large number of people make money over this?

**A.** Yes; their number is thousands.

**Q.** Do you represent the opinion of the Pandits of the Sanskrit College?

**A.** No; their opinion materially differs from mine.

**Dr. Beadon:** Can you give us details of any other cases besides those you have referred to in question 11?

**A.** The details of all the cases I do not remember. But one of the cases happened in my own family. At the age of 12 one of my own cousins had a child, and she suffered.

**Q.** Can you give details of the cases of seduction which you think are very frequent in this part of the country?

**A.** That I cannot give now.

**Q.** Have you come across any cases in your experience?

**A.** I have come to know cases of that kind, but I do not remember the details. They have never come to courts, but from my experience I have come to know of them.

**Q.** How many cases do you remember?

**A.** With all the particulars I do not remember even a single case.

**Q.** You say Brahmin boys very frequently pay visits to the brides residing at their father's houses. Do you mean to say that consummation of marriage takes place in such cases and does it take place amongst them before puberty?

**A.** Yes.

**Q.** You say that marriage and Gaona are helplessly performed at an advanced age. Why do you say it is helpless?

**A.** In the case of the Kshatriyas because of the scarcity of bridegrooms they have got to give large sums of dowry. So the social abuses stand in their way.

**Q.** You say that for the purpose of consummation of marriage puberty is not taken into consideration. What then is the criterion which decides whether a girl is fit for consummation or not?

**A.** Practically there is no criterion whatsoever. It is entirely left to the choice of the matrons of the house.

**Q.** To a question as to when a girl will be able to give an intelligent consent to cohabitation with due realisation of consequences, you say that it depends upon the climatic conditions. What has climatic condition to do with the intellectual maternity of the girl?

**A.** The climate has effect on the body, and only when the body is fully developed can a girl be expected to give intelligent consent.

**Q.** Why is it you say that the Brahmins look upon a girl as nothing better than an object of sexual pleasure?

**A.** Because they do not give the girls education, and they do not give them liberty.

**Q.** In paragraph 17 you say that there is a conspicuous difference in the very nature of the marital and extra-marital offences as the former seems to be void of any motive to harm or violate the chastity of girls while the latter goes to prove an encroachment upon and plunder of her right and property. What do you mean by property?

**A.** I mean their beauty and charm and other things.

**Mr. Mitra:** You say that marriage law does not seem to be in consonance with public opinion here. What is your own opinion on the matter?

**A.** I do not agree with that opinion. I think that Government should interfere in these matters.

**Q.** Do you think that legislation should be passed by the Assembly where there are representatives both of Hindus and Muhammadans?

**A.** Yes.

**Q.** What age would you have for marriage?

**A.** 14.

**Q.** What would you have for punishment for infringement of the law? Would you have fine as well as imprisonment?

**A.** Either fine or imprisonment; one of the two.

**Q.** Are you ready to grant exemptions for those people who sincerely believe that they are bound by the Sastras to perform marriages before puberty? Do you consider that this alone will be sufficient to grant an exemption in their cases?

**A.** In my opinion these Sastras have no strength practically. They are all now out of date.

**Q.** Is there any injunction really demanding people to give their daughters in marriage before puberty?

**A.** Yes.

**Q.** Do you know many people who sincerely believe in these injunctions?

**A.** Many of the orthodox people believe in it.

**Q.** Are you prepared to grant exemptions in their cases?

**A.** I am not prepared to grant exemptions for the sake of a handful of people.

**Mr. Shah Nawaz:** Are pre-puberty marriages common in these parts?

**A.** Yes.

**Q.** Do you mean to say really and seriously that in many cases marriages are consummated before puberty?

**A.** Yes.

**Q.** What will be the percentage of such cases? Will it be 50 per cent.?

A. Amongst the Brahmins it will be 50 per cent. I do not know about other classes.

Q. Is the wife sent to the house of her husband as soon as she is married?

A. No; she is sent 2 or 3 years after marriage.

Q. Is she sent before puberty?

A. There is no question of puberty at all.

Q. The present law is that a husband cannot have intercourse with his wife when she is below 13. You say that cases of rape within marital relations very often occur. Do you think it is so in every case?

A. No; there are many cases.

Q. Does consummation occur if the girl attains puberty between 12 and 13?

A. Yes.

Q. Do you think that the Penal Code is violated freely?

A. Yes; nobody cares.

Q. You say that women in this part of the country are not in favour of early consummation of marriage. Are you talking of educated women?

A. I am talking of uneducated women.

Q. Do you mean to say that uneducated women do not like to have early consummation at 12 or 13 even though the girl might have attained puberty?

A. They do not like it, but all the same they do it, because the Dharma Sastras say it.

Q. Do they like their children to become mothers at 14 or 15?

A. No.

Q. Can you conscientiously say that women in the villages do not like early consummation? Are you sure that a Brahmin girl who is brought up in different traditions and different ideas does not like to become a mother at 14 or does not like consummation soon after puberty?

A. I cannot say that.

Mrs. Nehru: You say that women do not like early consummation, but at the same time you say that they are the judges as to when consummation should take place. How is it then that consummation is allowed so early?

A. Generally these matrons give consent to the meeting of the couple.

Q. Why?

A. Because they believe in the Dharma Sastras.

Q. Will there be agitation amongst the Brahmins if the age of marriage is fixed at 14?

A. There will be a slight agitation.

Mr. Bhargava: What would be the percentage of the Brahmins who sell their girls and get Kanya Sonā?

A. I think it would be more than 50 per cent.

Q. What is the age at which these girls are sold? Do they sell girls at the age of 5 and 6?

A. Yes.

Q. Do you think that consummation will take place in cases in which such girls are brought up in the house of the husband?

A. Then we cannot say at what time consummation takes place.

Q. Are these girls generally sold to widowers?

A. Not necessarily; they are sold to any suitable bridegroom.

Q. Is the price greater if the age of the bridegroom is greater?

A. Yes; these abuses exist only amongst the lowest orders.

Q. Is it sanctioned by religion?

A. No; but it is connived at.

Q. Is there any reform society in your community?

A. Yes.

Q. Has it raised its voice against this evil?

A. There is no social co-operation amongst the Mythils. Of course those who are educated have come to realise the evils.

Q. Have they made any efforts to reform the other Brahmins?

A. No.

Q. Do you mean to say that in practice the Brahmins are not guided by the Sastras at all?

A. No; but they say they follow the Sastras.

Q. When you say that these Brahmins who follow the custom of early marriage follow the Dharma Sastras blindly, do you mean to say that they always follow them?

A. No; sometimes they follow them, but sometimes they violate them.

Q. Are the Brahmins here generally illiterate?

A. In these things they are generally illiterate, because they have got only oriental education.

Q. You say that the average age of puberty of girls in this part of the country varies from 11 to 13. At the same time you say that a girl will be able to give intelligent consent to cohabitation with due realisation of the consequences a year or two after puberty. Do you mean to say a girl will be able to give intelligent consent at the age of 12 or 13?

A. Yes.

Q. What do you think are the consequences?

A. That she would be a mother very soon.

Q. Do you think that a girl of 12 will understand the implications of becoming a mother when she gives her consent to cohabitation?

A. Not all the implications.

Q. When will she fully realise the consequences?

A. She will not be fully intelligent then.

Q. Do you think 16 would be a proper age?

A. Yes; but for a girl to realise the consequences 18 would be a much better age.

Q. Would you therefore raise the age to 18 in extra-marital cases?

A. Yes; I would have it even at 20, because it is improper after all.

Q. You say that the age of marriage should be 14 and the age of consent in marital cases 15. Why do you make this difference? Is it with a view to appease Brahmin public opinion?

A. I see that Brahmins are not prepared to accept it, and they are generally in the habit of marrying their girls at the age of 12 and sometimes even 10 and 9.

Q. Do you still have sympathy with those people who sell their children?

A. No.

Q. There will be agitation if the age is fixed at 14, and even 15. Then why not make both the age of marriage and the age of consent the same?

A. I think it would be difficult to give a hasty opinion on this point. I have given the actual conditions in our part of the country as they exist.

Q. Why do you make a difference of one year between 14 and 15. Do you not think that fixing the same age for both would be better?

A. How would it be better?



Q. If you fix the same age for both, there would be no cases of breach of the consent law, and there will be no widows before 15.

A. Yes; then they may be made one and the same.

Q. Do you want that a certificate should be obtained before marrying a girl?

A. Yes; otherwise how can the girl's age be ascertained.

Q. Do you not realise that the whole of India will be against it?

A. I cannot say that.

Q. Have you any experience of the law Courts?

A. I have a little experience.

Q. Do you think that non-officials should be associated in these trials?

A. Yes.

Mr. Mohd. Yakub: How long have you been Professor of English in the College?

A. This is my third year.

Q. What classes do you teach?

A. The Matriculation and the Intermediate in Arts classes which are attended by students who have obtained titles in Sanskrit.

Q. Did you consult ladies in preparing your statement?

A. Yes; I had my wife with me and I consulted her. I could not consult my mother because she was away on pilgrimage.

Q. Did you consult any other ladies.

A. No.

Q. Did your wife agree with you?

A. Yes.

Mr. Kadri: You say that local bodies might be depended upon to investigate and try these cases. Do any such bodies, for instance, any caste Panchayats exist in Bihar and Orissa?

A. There are some local bodies, but there are no caste Panchayats.

### **Written Statement, dated the 28th August 1928, of the Orissa Mohammadan Association, Cuttack.**

1. No.

2. In India as the girls do attain puberty generally between 12 and 13 years of age, the association regards the existing law as to the Age of Consent sufficient.

3. No. The other parts of the question do not arise.

4. Yes, by stimulating public opinion in that direction.

5. Already answered No. 2.

6. Cohabitation by husband on attaining puberty is common in our part of the country among all classes. No such case has ever come to Court.

7. Among the Mohammadan there is no religious injunction enjoining early consummation of marriage before or at puberty, nor is there any practice here.

8. The Association is not in a position to give any reply.

9. Generally attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In exceptional cases where physical maturity is not sufficient, parents generally do not allow consummation of marriage to take place.

10. In the opinion of this Association, as a general rule a girl of 14 years of age is competent to an intelligent consent.

11. This association has no such experience.

12. Not in a position to give any reply.
13. No.
14. Yes.
15. Yes, the difficulty may be minimised to a great extent by registers of births and deaths being regularly and properly kept.
16. No, the association does not think so.
17. No.
18. No, the existing procedure is in the opinion of the association sufficient.
19. Not in a position to suggest any.
20. Fixing a higher Age of Consent for marital case would be viewed more favourably in this part of the country than legislation fixing the minimum age of marriage.
21. The association would prefer to rely on the progress of social reform by means of education and social propaganda.

**Oral Evidence of Maulvi AHMED BAKHSH, Vice-President, Orissa  
Mohamedan Association.**

(Patna, the 4th January 1929.)

(Vernacular.)

*Chairman:* What is the membership of your association?

*A.* It is above 100. The members are all Sunis.

*Q.* You have said that after puberty consummation takes place. Does it take place before 13?

*A.* In Orissa generally the age of puberty is 12 to 13. If puberty is attained before 13 consummation takes place.

*Q.* You do not know if any such cases came to Court?

*A.* No.

*Mr. Kadri:* In answer to Question No. 14, you say that a girl can give intelligent consent with regard to consequences at the age of 14. Then do you agree that the Age of Consent may be raised to 14?

*A.* According to shariat no age is fixed but my personal opinion is that unless the girl is fully developed it is harmful to have consummation.

*Q.* What age would you recommend for consummation of marriage?

*A.* Personally I would recommend 16.

*Q.* If 16 is fixed as age for consummation do you think there will be any opposition?

*A.* Among the Mohamedans no age is fixed but those who have early marriages would object to it. Among the Mohamedans consummation takes place on the attainment of *balugh* which is 12, 13 or 14.

*Q.* Among the Mohamedans are there any marriages before 12?

*A.* Yes, there are marriages but consummation does not take place before puberty.

*Q.* What is the usual age of marriage among the Mohamedans?

*A.* It is generally after *balugh*.

*Q.* Among the Mohamedans if a girl is married before puberty by anybody except her father or grandfather she has a right of repudiation on attaining puberty. Don't you think therefore that the spirit of Islam is that there should be no marriage before puberty so that there may not be any cases of repudiation?

*A.* Yes.

**Q.** According to Islam the object of marriage is the procreation of *aulad saleh*, i.e., healthy children fit to serve God and His creatures. Unless a girl is fully developed she cannot procreate healthy children. If 14 is fixed as marriage age, will you have any objection?

**A.** According to religion no age is fixed and if you fix an age it would mean an interference in the liberty given by Quoran.

**Mr. Kanhaiya Lal :** We have been told that in East Bengal 80 per cent. of marriages among the Mohamedans take place before the girl has reached *balugh*. It may not be here but it is an evil. Don't you think it should be removed?

**A.** I am not in favour of any age being fixed for marriage but the Age of Consent should be raised to 15 for all people—Hindus and Mohamedans.

**Q.** Some witnesses have suggested that marriages should be registered giving the names and ages of the marrying parties so that the authorities or associations interested may be able to find out that the law has not been or is not likely to be breached. Do you think such registers should be maintained?

**A.** There is no harm.

**Q.** Who should keep this register? It has been suggested that municipalities should keep this register within municipal area and in the Mofassil Union Boards or District Boards should keep it. In Bengal, sub-registrars keep these registers. Do you think these should be kept by sub-registrars in Orissa?

**A.** In Bihar there is a voluntary registration of marriages among the Mohamedans. There is a registrar of marriages for Mohamedans in some thanas.

**Q.** Are they paid officers?

**A.** They are honorary officers but they get fees for registration.

**Q.** Should that system be extended to mofassil?

**A.** Yes, that would be better. I am in favour of entrusting this work of registering marriages to municipal boards within municipal areas and to Union and District Boards in rural areas.

**Mr. Bhargava :** What age would you recommend for extra-marital cases?

**A.** I think it should be raised to 18 or even more.

**Q.** You say that no age for marriage should be fixed. If the Age of Consent is fixed it will not be effective because consummation is a private act while marriage is a public ceremony and can be found out?

**A.** There is a ceremony performed on the attainment of puberty.

**Q.** That ceremony is not common all over India. Is that performed among you?

**A.** No.

**Q.** Therefore if we penalise marriage the law would be effective while in the case of consent law consummation may take place privately?

**A.** I am not in favour of having a marriage age fixed. It will be against our shariat.

**Q.** Can you suggest anything to make the consent law effective?

**A.** There should be accurate birth registration and then you can know the age of girls.

**Q.** But how can you say that consummation took place at a certain age? If you penalise marriages it is easy to find out but it would be impossible to know when the consummation took place.

**A.** The parents of the girl should not send the girl to the husband's house.

**Q.** But how can you stop sending the girl to the husband's house? She has to go on ceremonial occasions.

A. If you fix a marriage law there will be great opposition. I am not in favour of fixing a marriage law.

Mr. Shah Nawaz: If 75 per cent. of the people marry before puberty even then you think the marriage age should not be fixed?

A. No.

Q. Don't you think it is an evil?

A. Yes, it is an evil but it is against the Mohamedan law.

Q. Supposing Mohamedans abuse the power given to them by shariat and supposing the mortgage their property would you not stop it. In the Punjab the Land Alienation Act has saved the Mohamedans. Supposing we introduce the Land Alienation Act that no agriculturist is allowed to sell his property it is against the Mohamedan Law but it has benefited Punjab and it may benefit Sind where it is proposed to be introduced. If an extreme limit is reached that 70 per cent. of the girls are married before puberty don't you think it is the duty of the State to prevent it?

A. It will be violating the shariat.

Q. What do you think about King Amanullah. He has ordered that any man who is polygamous cannot enter into his service. Is that not an interference in the Mohammedan Law but yet it is a just interference?

A. I do not favour fixing the age of marriage.

Mr. Mitra: In paragraph 20 you say that fixing a higher Age of Consent for marital cases would be viewed more favourably in this part of the country than legislation fixing the minimum age of marriage. What is your reason for favouring the Age of Consent. You think that people marry early and it will be a hardship for them if you fix a law?

A. Yes.

Q. Are there no religious reasons?

A. No. It is a matter of convenience. There is no religious injunction to have the girl married at a particular age.

Q. If a law is passed to the effect that Mohamedans should not marry another wife during the lifetime of one wife unless she is incapacitated by illness or otherwise would you recommend that legislation?

A. Yes.

Q. Don't you think that would be going against religion?

A. No.

Q. Don't you think fixing the Age of Consent would be an interference as much as fixing a marriageable age because according to you a man has got a right to cohabit with his wife after puberty?

A. I am in favour of consent law but not in favour of marriage law.

Q. Do you think fixing the age of marriage is a different thing from fixing the Age of Consent as far as interference with liberty is concerned?

A. Fixing the age of marriage would wound the feelings of the people.

Q. Are you in favour of compulsory education?

A. Yes.

Q. Don't you think that early marriage interferes with education of the girl. If you think that early marriage is so bad that the whole nation is deteriorating, it interferes with education and development of the girls, then what is your reason for not favouring the age for marriage being fixed?

A. I admit that it is injurious to have early marriage but early marriage would not have any bad effect on the health if consummation is disallowed.

Q. But you know that in marital cases we have a consent law but it is not effective. People do not like to go to Court to expose their sons-in-law and it has therefore been suggested that marriage legislation will be more effective and as regards interference with religion or liberty is concerned, both marriage law and consent law stand on the same footing.

A. But there is some difference between the two.

*Chairman:* Is it obligatory to have cohabitation after the attainment of puberty?

A. No. It is not obligatory but cohabitation may take place any time after puberty.

Q. There is already a law of consent at 13. If puberty is attained before 13, it already interferes with your liberty?

A. According to shariat it is not an interference.

Q. Is any age fixed for marriage according to shariat?

A. No.

Q. So if no age is fixed for both, what is the reason in having one but not having the other?

A. The consent law is for the good of the people and there is no harm but marriage law is against the shariat.

### Oral Evidence of Mr. SACHCHIDANAND SINHA, Bar-at-Law, Patna.

*(Patna, the 5th January 1929.)*

*Chairman:* Were you a member of the Executive Council, Bihar and Orissa?

A. Yes.

Q. Have you been connected with any social reform movement?

A. I am not connected with any particular reform association; but I have been connected with the Indian Social conferences which are held from year to year.

Q. With reference to Question 20, which of the two alternatives, if any, would you prefer?

A. It will be a sort of experiment in social legislation. It is very difficult to say which alternative on the whole would be preferable. My own view is that beyond a certain limit, which may be absolutely necessary in the interests of young girls or considered desirable on medical grounds, there should be as little interference in these social matters as possible. What I mean is, for instance, when the Age of Consent in the Penal Code was fixed at 10 before 1891 that was obviously low, in my opinion, even for a country like India and therefore an attempt was made during Lord Lansdowne's time to raise it to 12. I could appreciate that but now that the age is at 13, although I am not opposed to a reasonable increase in it, I think we should be very careful in increasing the age to a high figure. It may not be practical going far beyond public opinion and social legislation carried out beyond the limits of public sentiment would be bad. I am prepared to go up to 14 but I think it is not necessary under our climatic conditions to go beyond 14 in marital cases.

Q. What do you think should be the age in extra-marital cases?

A. I think 15 would be better.

Q. Don't you think that extra-marital cases require more protection?

A. I have been practising here for 38 years and I was also associated with the working of our Courts as a member of the Government for five years. I think the cases of rape and kidnapping have been very few in this province.

Q. So far as the statutory Age of Consent at 13 is concerned have you any reason to believe that there are any cases of breaches of the law as it is at present?

A. Very few, and they do not come to notice. But the difficulty in such cases as a rule is that people are not willing to come forward and make a complaint.

Q. But there are certain classes among whom child marriages take place and they told us that soon after puberty whenever it occurs irrespective of age, consummation takes place. In view of this have you any reason to believe that there are any breaches of the law?

A. If people have told you that there are instances I am not prepared to contradict them.

Q. What they have told us is that consummation soon after puberty is common and that nobody cares for age?

A. I think consummation after puberty is common.

Q. Then if there are some girls who attain puberty at 12 consummation may take place before they are complete 13. Do you think there are any cases in which breaches of the law occur at present?

A. May be in a small number of cases but certainly it is not large.

Q. Supposing the age is raised to 14 do you think there will be a larger number of cases of breach?

A. May be a little larger, but it is in the interests of society to raise the age by one year.

Q. If we raise it to 14 there will be a larger number of cases?

A. There may not be a large number but there may be a larger number.

Q. What is generally the age of puberty in this part of the country?

A. I think it is between 12 and 13.

Q. And therefore if we raise the age to 14 probably almost all girls attaining puberty will come under that?

A. Yes.

Q. In that case can you suggest any method of making this law effective?

A. Law, as I know, is only made effective when there is public opinion behind it. If you put it in the hands of the police it will make matters worse. Therefore it is only our hope that as education advances public opinion will be stronger in this respect.

Q. Therefore you want the law to have a more or less educative effect.

A. I do not think it can do more than that. I am very anxious to point out to the Committee that in my opinion it is always a mistake to legislate when the legislation is so much beyond public sentiment that it can be circumvented. If public sentiment does not approve of a thing they try to circumvent it.

Q. Supposing there is a law of marriage fixing the marriage age at 14, what do you think of its effectiveness?

A. I am not in favour of fixing any age for marriage in India at the present moment. I think it is not likely to do any good. It will deepen dissatisfaction against the Government. At the present moment rightly or wrongly there is a very strong feeling against the Government and a legislation of this kind telling people that you will not marry your children unless they have attained a certain age may not have the desired effect. It does not seem to me worth while to resort to legislation.

Q. There are two alternatives—one is to have the Age of Consent at 13 or 14 but public opinion not being behind it, it will practically be a dead letter, and you suggest that the law of marriage is not very desirable from the point of view of discontent arising. In either case it is going to lead us nowhere. Do you think that the law of marriage should not be enacted because it may possibly arouse discontent and add some fuel to fire?

A. It will lead to various complications especially among the lower classes of people whose children are married very young. During the last 30 years I have noticed an appreciable rise in the age of marriage among the higher classes; so it will affect the lower classes who are illiterate and who keep no

records of dates of births. And if it is to be made some kind of offence it will lead to a lot of discontent in the country, it will be difficult to prove the ages and there will be swearing in our courts. When they come to Courts they speak lies which they do not do in the villages; in the Courts there is a different atmosphere. Therefore to put temptation in the way of these people to indulge in a little more perjury seems to be far from desirable in the interests of society at the present moment.

**Q.** What is your opinion personally about its being an evil?

**A.** That is not open to doubt. We go by medical opinion and if medical opinion says that premature maternity is detrimental to the health of the mother and in the long run it tells upon the society at large, we should accept that and work up to that ideal but the consideration is the speed at which we should go. Of course it would be very much better if our girls do not become mothers before 16 or 17 but you must take the public opinion with you.

**Q.** Within your experience have there been such cases where girl mothers of 14 or 15 suffered?

**A.** I know of a few cases. I may tell you that so far as this point is concerned during the last 20 or 30 years there has been a very great change in the mentality of the people regarding early marriage and in the case of my own caste marriages do not take place before 15 or 16 in the case of boys and 12 or 13 in the case of girls. Marriages take place at this ages but *dviragaman* ceremony takes place two or three years later. In the vast bulk of people constituting the lower strata of society marriages take place at 8 or 9.

**Q.** And the later you would put at about 80 per cent.?

**A.** About 60 or 70 per cent.

**Q.** Do you think there is a certain class of people here who would prefer to marry their daughters late but for the fact that there is social ostracism and social tyranny exercised? Do you think there are such people whose hands will be strengthened by a law if passed?

**A.** I do not suppose there is much social tyranny in the matter of marriages in this province.

**Q.** Not even among the Brahmans?

**A.** Maithil Brahmans are the most orthodox people in this province; they live mostly in north Bihar. They are regarded as the most conservative element in the Hindu society in this province but even among them a change for the better is coming. Two or three Maithil Brahman boys have gone to England for different examinations. Among them the marriage age is rising.

**Pandit Kanhaiya Lal:** Is *kanya sona* common among them; and money taken and early marriage performed?

**Q.** Money is taken by the bride's father but that is a different evil which cannot be cured by legislation. What I meant to convey to you was that even among them the age has risen to 10. When I came back from England girls used to be married at the age of 5 or 6. Even among them there is a change for the better.

**Chairman:** Are there any communities in Bihar who have necessarily marriages at an advanced age?

**A.** Mussalmans and the Kayasthas among the Hindus are the two communities who are educationally advanced and amongst them marriages are now taking place at a very advanced age. The average Kayastha boy is never married before 18 and the average Kayastha girl is never married before 14 or 15.

**Q.** What is the usual age of marriage among the Maithil Brahmans?

**A.** It is now about 10 as against 4 or 5, 30 years ago.

**Dr. Beadon:** Do you think that 14 is an advanced age for girls to become mothers?

A. In the abstract it may not be; but considering our climatic conditions I think it is all right.

Q. Why do you say 'considering climatic conditions'?

A. My impression is, I do not know, I may be wrong, that in this matter of attainment of puberty there is a difference in the people living in tropical zones and temperate zones. It may be wrong but that is my impression.

Q. It is wrong but that is a very wide belief. In your community girls marry late; are there any cases of concealed puberty?

A. There is no question of pre-puberty marriages among the Kayasthas.

Q. In answer to Question No. 11 you have said that injury has resulted as a result of early child bearing. Would you give us one or two cases without giving the names?

A. My impression is that sometimes when girls have been married young by which I mean at the age of 11, 12 or 13 and they have become mothers at the age of 13 or 14, they have not been able physically to bear the strain of child-birth and they have succumbed to it.

Q. Do you know one or two cases like that?

A. Certainly I know of half a dozen cases.

Q. In the last 5 years how many cases do you know of?

A. 5 or 6 cases in which the mothers actually died and were unable to bear the physical strain of child-birth.

Q. I suppose babies died too?

A. In some cases babies died too but sometimes by providing proper nursing they are kept alive but I know the mothers in two or three instances passed away.

Q. What do you think about the children? Do they compare favourably with the children of older mothers?

A. How could they? They are as a rule bound to be weaklings.

Q. But so many people come and tell us that they are not weaklings!

A. It is a very difficult question to answer. On account of the mother not being sufficiently robust the child is not likely to be robust. There may be exceptional cases to the contrary, but as a rule that will be the case.

Q. You are no very much in favour of a law preventing child-marriage. In view of the very large number of widows don't you think something ought to be done to prevent this sort of condition?

A. If I felt sure that the law would remedy the disease I would certainly be in favour of it.

Q. If we fix the age of marriage at 14 it would be impossible for any child to be a widow under 10 or 12 say. If there is no marriage before that age there will be no widows.

A. That is quite obvious, a girl cannot be a widow unless she is married.

Q. Don't you think that the evil of child widowhood is so much spread that we should be prepared to face some unpopularity to overcome this?

A. The question is who is facing. If it were a national Government it would be prepared to face it. In the case of a foreign Government and in troublous times I would not advise the Government to embark upon any legislation that may make it necessarily unpopular.

Q. But don't you think that the matter is sufficiently vital for the Government to disregard the possibility?

A. I would not advise the Government. It may do in spite of me.

Mr. Shah Nawaz: Would you advise the Assembly to legislate?

A. If it chooses it may. There are two questions, whether the Assembly does it and assuming it did whether it should do it.

Q. Supposing the Government remained absolutely indifferent?



A. We are dealing here with mass mentality. The masses here do not appreciate the point that there is a body called 'assembly' which consists of elected members. If they knew this we shall be perhaps far ahead of the Assembly. We shall then have a House of Commons. Whether it is done by the elected members or by anybody else they only know that it is done by the Government, they only know it is done by the 'Sirkar'. They don't realise that subtle distinction that Assembly is something apart from the Government.

Q. Don't you think the voters do consider that the Assembly has elected members and that majority in the Assembly are Indians?

A. I wish I could honestly persuade myself to say that the voters know it.

Q. At any rate the educated people think like that?

A. There is no doubt about that.

Q. Are pre-puberty marriages common in this part of the country?

A. Among certain castes it is prevalent. Among the Maithil Brahmins who are numerically a large section of the population early marriage obtains. In North Bihar pre-puberty marriage obtains.

Q. What would you put the percentage at?

A. It is very difficult to give the percentage.

Q. Would you say 40 per cent.?

A. May be 25 per cent. roughly speaking.

Q. Will they agitate seriously?

A. They may.

Q. What would be the nature of the agitation?

A. You might have heard of the Maharaja of Darbhanga. He is starting an agitation about such things. He carried a deputation to the Simon Commission saying that in Government rules and regulations the orthodox are being ignored. All the offices and seats go to the heterodox people and the orthodox people do not get anything. He is the leader of the Maithil Brahmins.

Q. You say he does not represent the masses?

A. He does represent the masses.

Q. Has he influence over the masses?

A. He has got wealth and he has got that advantage of being the leader of that particular community. Caste influence and wealth go a long way in the year 1929 and certainly the Maithil Brahmins will carry on agitation.

Q. Don't you think that we might proceed gradually to 14 and then go further on?

A. I don't believe in bettering human-beings by legislation. Whenever you try that it becomes tyrannical. Compelling human-beings to adopt certain conduct, not to drink, not to eat this thing or that thing would be tyrannical.

Q. Then will you carry on social propaganda?

A. Yes.

Q. What will be the nature of that propaganda? You mean education.

A. Education is the best thing.

Q. Will you have compulsory education?

A. Yes.

Q. For boys and girls both?

A. Yes. Education is the best propaganda. Social conferences must be held and they are being held every year now. Educative propaganda should be carried on a much larger scale than is at present done in various provinces. That is the only real effective way. By compelling and impelling and by inspiring fear in the minds of the people is not the right way. That is my strong feeling.

**Mr. Bhargava:** You say that this legislation shall have the educative effect. Do you mean that the mere existence of the provision on the statute provision on the statute book will have some effect?

**A.** I believe it does have that effect. I think legislation if it is not too much in advance of public opinion gradually filters down the minds of the masses and in course of time takes them to a higher level. That proviso being kept in view, that it is not too much in advance of public opinion and public sentiment, it will have an educative effect.

**Q.** The present discontent against Government is confined to the educated classes?

**A.** I do not believe so.

**Q.** If I tell you that the majority of the educated gentlemen who have appeared before us say that there is great discontent with the present state of the law then will you advise a change?

**A.** I do not believe that at all.

**Q.** Don't you think there will be discontent against Government if such a legislation is not passed?

**A.** I don't think so.

**Q.** Do you know that in the Assembly speeches were made to the effect that because we have not got a National Government they do not want us to progress and they are putting obstacles in the way of passing this legislation?

**A.** I would not take that view. A foreign Government has to proceed very cautiously in a matter like that. I would not blame a foreign Government, but if you change the personnel and it became national it will be prepared to take greater risks. I have studied the Mughal administration and they had much more in common with the Hindus than the British Government can possibly have. Even they did not take very long steps in the matter of social legislation.

**Q.** I understand you mean that the claim of this Government that they are a national Government is absolutely unjustifiable.

**A.** This is a matter in which I do not wish to be drawn into.

**Q.** The question is that the Government says in all these matters we look at the matter from a national standpoint. Supposing this claim of the Government is right would you then advise the Government of India to take up this attitude?

**A.** How can a foreign Government become national?

**Q.** Do you know the educated women of India are very much in favour of an advance in this matter?

**A.** The advance women are in favour of an advance, I know, but their number is so small unfortunately at present.

**Q.** If I tell you that the orthodox ladies who have appeared before the Committee have all unanimously said that there should be an advance would you then agree?

**A.** I am myself in favour of an advance, but I say the advance should be reasonable and not necessarily drastic.

**Q.** And the least that they have recommended is 16.

**A.** I understand that. They will naturally take an advanced view and I won't accept their statement as necessarily correct for our guidance.

**Q.** They have expressed the opinion that without the marriage law the Age of Consent law would not work. That is the general consensus of opinion of the witnesses who have appeared before us?

**A.** I respectfully beg to differ from that.

**Q.** May I know whether you realise that unless there is a marriage law this consent law would be a dead letter?

A. I do not quite realise that to begin with. Even if I could persuade myself to think that that view is correct I would not necessarily be in favour of a marriage law.

Q. Then what is your objection?

A. My objection is that I would not let the State, the organised Government called the State or the mob dictate to me in my rules of life and conduct. If I can't think for myself I won't permit either the State or the mob to dictate. When somebody dictates when I am to marry my girl and I am not to eat such and such thing and not to drink such and such thing it works out to be tyranny.

Q. But here we are not interfering at all. Fixing the age of marriage is no interference.

A. You are not merely doing that in a directory way but you are doing it in a mandatory way by imposing the penalty. If you could ask the Government to issue a manifesto advising the people not to marry the children before a particular age and getting the signature of the people I would have no hesitation in signing that document myself. But when you say if you break the law you will be liable to fine and imprisonment, you attach some penalty to it, that becomes a serious matter to consider whether it is worthwhile doing it.

Q. May I know why you want that we should raise the age from 13 to 14 so far as the Age of Consent is concerned?

A. Purely as an educative measure. To make the men realise that consummation before such and such age is bad.

Q. But in the case of marriage law we are providing only a fine or one or two months' imprisonment but in the case of consummation law we have two or three years' imprisonment.

A. For the obvious reason that the two stand on a different footing. The matter of rape in the Indian Penal Code stands on a different footing altogether from that of a parent marrying his child below a certain prescribed age. The idea underlying the law of consent is the protection of the girl so far as her health is concerned and that is of national importance and that to me is a very important differentiating circumstance.

Q. Is there no social aspect of it?

A. The primary object is not to work up social reform but to protect the girl from injurious conditions setting in.

Q. There is the social aspect also because you are interfering with marital relations.

A. All legislation interferes with human liberty. It is a question of how far you should go. I am for the State taking minimum legislation in a matter like that, minimum legislation that will have public sentiment behind it, it may be 13 or 14. I am not in favour of legislating that if a man marries a girl below a certain age he should be sent to jail or he should be fined.

Q. The difference is this then. In one case you interfere with the liberty of the husband and in the other case you interfere with the liberty of the parents. Is it not?

A. You interfere in the first case because it affects the wife.

Q. You interfere in the second case with the liberty of parents because it affects the child.

A. Not to the same extent. If as a result of marriage consummation comes about there is the section of the Penal Code to take effect.

Q. Does it not follow also that instead of holding the parents responsible you hold the boy responsible who is not so guilty?

A. May be. It may be an interesting point who should be held responsible, the parents or the boy. I would, as a practical man hold the youngman himself responsible for his actions rather than his parents.

*Q.* You think also if this Age of Consent is raised there would be discontent against Government. There are many people especially the Brahmins and those who follow the Brahminical rules who regard that it is religious with them to have consummation on the first appearance of menstruation.

*A.* To that extent, such as in the case of Suttee which was I would not use the word barbarous, a practice considered to have religious sanction behind it, the State must intervene to give protection to the individuals concerned.

*Q.* Should I understand that when national interests are involved you would go to the extent of sacrificing the religious sentiments of the people?

*A.* When the interests of the society at large are concerned they must be Subordinate and that is a wise policy too.

*Q.* Where would you draw a line of distinction then?

*A.* It is a very difficult question. The line of demarkation must depend upon each man's mentality and temperament.

*Q.* Supposing there is no legislation fixing the minimum age of marriage and there is only the Age of Consent law, can you suggest anything whereby this law of consent can be made effective so that girls could be protected?

*A.* It is difficult to suggest anything which shall make it more effective than penal law generally is.

*Q.* Then practically it comes to this that we are absolutely helpless unless we have the marriage law. Is it not?

*A.* It brings me to my original contention that in social matters legislation is helpless unless it is backed by strong body of opinion.

*Q.* What would you suggest so far as propaganda is concerned. Has the Government any duty in the matter?

*A.* The Provincial Governments may certainly spend a reasonable amount of money if voted by the Legislative Councils in carrying on social propaganda.

*Q.* Can you tell us if the Government of Bihar and Orissa has spent anything?

*A.* During the five years that I was a member of the Government nobody asked for it.

*Chairman:* Not even in the matter of prohibiting drink?

*A.* The demand was that the excise policy should be altered and the excise revenue abolished.

*Q.* Not for propaganda by Government?

*A.* No.

*Mr. Bhargava:* Even if there is no demand don't you think that the Government should itself do that?

*A.* Naturally when I was the Finance Member my policy was to hold the strings of the purse as tight as possible.

*Q.* In your view Government should certainly spend some amount?

*A.* It will be a legitimate use of the public purse provided the Government can afford it.

*Q.* Would you suggest any ways in which Government can take up this activity?

*A.* There are various ways. I would try to enlist the support of the press in each province and otherwise distribute leaflets. In fact I may tell you in this province the Public Health Department is doing something from time to time in a very half-hearted way no doubt. There is no money at their disposal. The Government can however usefully and profitably spend the money in that way.

*Q.* You said you have been attending social conferences and propaganda has made headway. These social conferences are held every year with the Congress and as a matter of fact are attended by very few. Is it not?

A. As compared to the Congress, very few.

Q. Then persons do not come from the masses but they are already educated?

A. Mostly educated, but I have seen a large number of people from the lower strata of society, especially the women have been taking part in the conferences.

Q. And the resultant effect of 30 years struggle has been only to raise the age from 5 or 6 to 9 or 10 among a certain section of the people?

A. Which I personally call very hopeful. If in 30 years you have undone the effect of 30 centuries to that extent, it is sufficiently encouraging and hopeful.

Q. Is there any reform association in Bihar and Orissa working in this direction, i.e., popularising the evil effects of early marriage?

A. There may be but I do not know of any.

Q. Then it may take about 200 years to do something by way of propaganda?

A. I am afraid of tying myself to a particular century or a particular era. It may take a long time.

Q. You said it will be difficult to prove the age?

A. Yes.

Q. But this difficulty is common to all cases in which the question of age comes for instance, kidnapping, abduction and such other crimes. Have you not got a system of registration here?

A. Presumably it is there.

Q. Is that system in your opinion not working properly?

A. It is more a paper transaction than anything else.

Q. Will you make any suggestion as to how to make it more accurate?

A. That can be done by enjoining stricter rules.

Q. At present there is no obligation on the parents to report the birth?

A. In municipal areas it is obligatory but in rural areas it is not. I am not opposed to lying it down as a duty of the parents to report a birth. I think the State can make that demand of its subjects. I would not however make it penal.

Q. Then how would you make it effective?

A. It does not cost anything for a man to report. I think 80 per cent. of the people would do it. I mean, it works out to be no very great hardship on the vast bulk of the people. Making all these things penal would make the life of the poor man miserable. If I cannot reduce the list of offences in this country I cannot add to it. I am against increasing the list of offences.

Q. If you raise the Age of Consent to 14, it would happen that a greater number of cases would come before the Courts than at present. It is the policy of law to prevent such cases rather than punish every offender?

A. That should be so.

Q. Then if this is to be a preventive measure are you in favour of a provision like the one in Section 107 Criminal Procedure Code (of the Indian Penal Code) so that in proper cases when it is known that the commission of the offence is soon likely the Court may call upon the police at the latter's advice to take steps to see that the wife is separated from the husband?

A. The effect of it would be that you would be placing the poor husband or the husband's father at the same level as the 'Gonda'. You know at present Section 107 Criminal Procedure Code has got a certain sort of moral obloquy about it.

Q. But if there is another section in which there is no sort of obloquy inserted in the Penal Code you would like the proposal. The parents may be called upon to give bonds. There is no moral turpitude involved in that.

I myself deprecate punishment in these cases because the husband will suffer and the wife will suffer also.

A. I do not stand in the way provided you do not make it penal in any way.

Q. If the bond is broken?

A. I don't suppose it will be so. There may be a breach in one case out of a thousand. This is a matter which requires very careful consideration. I think it is so important that the country should be given an opportunity of expressing itself. It is a very novel way. I do not know of any country in which it is done.

Q. You do not know of any country also in which consummation takes place before or soon after puberty?

A. I do not know about that. It is at the same time a matter which requires careful consideration. If some suitable legislation can be devised which shall not carry with it any obloquy or turpitude it may be considered, but I can't give any opinion off-hand.

Mr. Kadri: Do you realise that there are a large number of virgin child-widows in the country?

A. Unfortunately there is a large number.

Q. Don't you think that in order to lessen this number the marriage legislation would be of some effect?

A. But the question whether the effect so produced, would be worthwhile to obtain, in view of the other conditions which may come into existence is a matter which the Government and the Assembly must consider.

Q. There are nearly 3 lakhs of widows below 10. Is it not so?

A. Probably there are.

Q. And there is no re-marriage?

A. I have been reading social reform papers and I think comparatively speaking larger number of cases of re-marriage take place now than before.

Q. There is a small percentage, almost negligible. It may be hardly 5 per cent. Is it not so?

A. 5 per cent. compared to the times when there was hardly a single marriage is perhaps not bad. From what I see in the papers I think we might say on the whole a number of re-marriages take place.

Q. Not more than 100 a month? They are taking place in Punjab and United Provinces?

A. It varies in different provinces. In the Punjab a large number of marriages take place amongst the Hindus.

Q. Among the higher classes?

A. Yes.

Q. There are several progressive Indian States like Baroda and Mysore where there has been marriage legislation and there has been no discontent.

A. It may be due to the fact that the ruling chiefs in Baroda and Mysore are not foreign but indigenous, and that may make a world of difference.

Q. You don't think our Assembly is national?

A. The time may come when it will become. There are so many nominated officials.

Mr. Shah Nawaz: The majority are elected?

A. That is true.

Q. Supposing the Government remained neutral?

A. If the Government are prepared to take the risk, let them. Even if the Government remained neutral and legislation is affected only by the elected members still it is worthwhile considering whether such legislation should be attempted. I am not opposed to it entirely. It requires very careful consideration. It should not be done light-heartedly in a country like India.

*Mr. Kanhaiya Lal :* Can you say what period should be allowed to elapse after puberty when consummation should be allowed?

*A.* I would not attempt to answer that.

*Q.* There is some difficulty experienced in bringing cases of the breaches of the law to light. You propose to raise the age to 14. Can you make any suggestion as to how to bring such cases to light?

*A.* No, I have got no cut and dry scheme.

*Q.* Do you think social reform associations in the country or women organizations would be able to help in the matter?

*A.* If social reform associations are properly constituted perhaps there will be some advantage of these organizations in a matter like that. They may be able to take up this class of work.

*Q.* Would it be worthwhile constituting vigilance societies in cities and rural areas to look into these matters?

*A.* It is quite worthwhile.

*Q.* Should they be constituted on a voluntary basis or nominated by the Government?

*A.* Partly nominated and partly on the advice of the various communities.

*Q.* Do you think caste panchayats will be able to help us in the matter?

*A.* Wherever they exist. In an educationally advanced community like the Kayasthas there are such boards but in the lower orders there are no panchayats like that.

*Q.* Do you think they will be helpful?

*A.* They may be helpful.

*Q.* Have you got village panchayats in Bihar?

*A.* Yes, some kind of panchayats there are.

*Q.* Have you got the Village Panchayat Act working?

*A.* There is an Act called the Village Self-Government Act, but it is not working.

*Q.* Suppose we give some sort of authority to these village panchayats to look after these classes, do you think they will be helpful? The trouble is that they generally show sympathy towards the husband.

*A.* If we impose this burden upon the village panchayats I think on the whole they will discharge their duties satisfactorily.

*Q.* You do not want police interference in these matters. Is it your intention that these cases should be made non-cognizable?

*A.* I shall not let the police go in these matters so far as possible.

*Q.* Is that irrespective of the age of the girl?

*A.* Yes, irrespective of the age of the girl.

*Q.* By so doing would you not be narrowing down the chances of detection?

*A.* If there are village panchayats you can get the information all the same.

*Q.* Would you be satisfied if these offences are made cognizable subject to the condition that these cases are investigated into only by higher officers of the police like the Deputy Superintendent or the Circle Inspector?

*A.* That may be a suitable safeguard.

*Q.* Another suggestion has been made that in all marital cases the magistrate should be required to make a preliminary enquiry before issuing summons or notice or warrant to the accused. Do you think that would be useful?

*A.* I think so. It may prevent process against some people who should not be summoned at all.

*Q.* At present cases under 12 go to the Sessions and above 12 go to the magistrate. Instead of having these two different forums suppose all these

marital cases are directed to be triable only by a matrimonial Court to be constituted in each district and to consist of the magistrate and two non-officials, do you think that will expedite the trial and inspire greater public confidence?

A. I am not in favour of creating special Courts for special offences.

Q. In other countries we have got juvenile Courts?

A. But these differ. Here I should be content if these cases are tried by the Court of Sessions.

Q. That will prolong the trial and the girl would be dragged from Court to Court?

A. I would think a Sessions Court would do. I won't like to have a special kind of tribunal with which I am quite unfamiliar and of which we have no experience.

Q. Would the association of two non-officials with the magistrate either as assessors, jurors or as co-judges inspire greater confidence?

A. As co-judges they would be better.

Q. You think at least two non-officials of suitable standing and calibre can be obtained.

A. That should not be difficult now.

Q. Another suggestion has been made that these marital cases might be allowed to be compounded with the sanction of the Court so that good relations might be restored between the husband and wife?

A. If the Court thinks desirable that in the interest of peace and amity the cases might be allowed to be compounded it may do so.

Q. If we have a law fixing the minimum age of marriage at 14 as recommended by Mr. Sarda and also a law raising the Age of Consent, would it be desirable to have a system of registration of marriages, i.e., reports of all marriages being made to a prescribed authority giving the names and ages of the marrying parties so that we might know where the law is infringed or is likely to be infringed?

A. That should be encouraged.

Q. Would you recommend that that should be made compulsory?

A. Yes.

Q. Who should be the registering authority?

A. In towns it may be entrusted to the sub-registrar—the man who registers documents.

Q. In the village?

A. It may be entrusted to some kind of authority.

Q. Have you got Union Boards in this Province?

A. We have got the local Self-Government Act modelled on the Bengal Government's similar Act. But that Act has not been enforced for political reasons, I think.

Q. Would you have the same agency now employed for the registration of births and deaths?

A. In the villages I would entrust this work to the village panchayats; otherwise it might create some hardship to go to a distant place and report the marriage.

Q. Would you place the obligation on the marrying parties or the priest or on both?

A. It would be on the parents or guardians.

Q. Not on the priest?

A. I would let off the priest.

Q. You have got a system of voluntary registration of marriages applicable to Mahomedans. Can you tell us whether there is a large percentage of marriages registered?



A. I don't think a large number of marriages is registered up till now. Nobody cares for registration, that is the truth.

Q. Have you got registrars appointed on a voluntary basis who get no salaries except fees?

A. Here we have got salaries now, I think. I am not quite sure however.

Q. You have now got various acts for the registration of marriages of Mohammedans, Parsis and Christians. Would it not be desirable if we can have a uniform system for all?

A. It should not be unworkable.

Q. Would you recommend that a boy should be disqualified for appearing at the school final examination, if he is married after the rule comes into operation. Do you think such a system would be helpful in advancing the age of marriage and postponing consummation?

A. That would be an interference with the liberty and education of students. We have to try the experiment, that is a novel thing.

Q. In the United Provinces it has been done. The rule is to come into operation in 1930. It was passed in 1928.

A. Let us see how it works. Before I generalise I would like to see how it works in other provinces.

Q. Would it not be better than a penal measure?

A. The penal measure affects the community as a whole. That is already on the statute book. We are only thinking of advancing the age by one year.

Q. Up to what age would you like to exempt the boys from punishment we are the parents of either party are responsible for bringing the couple together?

A. If you are going to make such exceptions you would practically nullify the effect of legislation.

Q. Is it worthwhile punishing a boy of 14 or 16?

A. The punishment need not be transportation. The trouble is that the punishment is sometimes out of all proportion to the gravity of the offence. He may be fined Rs. 50.

Q. Would you not exempt the boy in any case?

A. In a case like that, I shall direct the Court to let him off after admonition under Section 562. Criminal Procedure Code.

Mr. Bhargava: And run in the parents for abetment?

A. No, nothing of the kind.

**Written Statement, dated the 13th August 1928, of Mrs. E. STILLWELL, Zenana Bible and Medical Mission, Duchess of Teck Hospital, P. O. Gulzarbagh, Patna District.**

5. The usual age at which girls attain puberty is about 11 years.

9. In my opinion attainment of puberty is certainly not a sufficient indication to justify consummation of marriage. About 5 years should be allowed to elapse.

10. At about 16 years of age.

11. I have seen many girls injured at child-birth through poor development of ages from 13 to 15 years. Where the child survives, it often has very poor stamina.

12. Early consummation and early maternity are responsible in large measure for the high maternal and infantile mortality.

14. Women feel they must follow the custom but most would be glad if the custom were for later consummation.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda.

### **Oral Evidence of Mrs. E. STILLWELL, Zenana Bible and Medical Mission, Duchess of Teek Hospital, Gulzarbagh, Patna District.**

(Patna, 5th January 1929.)

*Chairman:* May I know what exactly is your connection with this hospital?

A. I am the medical superintendent residing on the premises.

Q. How long have you been connected?

A. Nearly 23 years.

Q. Is there a maternity home also?

A. There are maternity wards.

Q. What number of cases do you get in a year?

A. In the year 1928 we had 294 cases, which is rather in excess of any previous year.

Q. What class of people do you get, poor, rich or middle class?

A. Major portion is of the middle class.

Q. What is your authority for saying that girls in this part of the country attain puberty at 11?

A. This is after an examination of a number of cases and enquiry from Indian women.

Q. You think this is the common age.

A. Approximately that is the age.

Q. On this point there is great difference of opinion. Have you kept any records to show that?

A. I have not got any systematic records.

Q. Have you reason to believe that there are cases in which there is consummation before the girl is 13 complete?

A. I know there are cases, but I don't know how many.

Q. Have you known any cases during the last two or three years where the girl has become a mother below 16?

A. Yes.

Q. Have you known any cases below 13?

A. Not actually in the hospital.

Q. Do you go outside also?

A. I go out occasionally.

Q. You have attended girl-mothers of 13?

A. Not that I have been absolutely sure of it, but I have had cases in which consummation took place under 12.

Q. Have you known many cases of girls who have become mothers below 14?

A. I don't know the exact number, but quite a number I have seen.

Q. You have certainly seen below 15.

A. Certainly. But what I have noticed is that a girl whom I would have taken to be 13 from appearance has turned out to be older on enquiry.

Q. But that may be because of the desire to avoid the statutory law. Have you met many such cases where the girl has given a higher age while from appearance she would look to be of a smaller age?

A. There have been a number of cases like that.

Q. Has it always been so?

A. Not always, very often.

Q. Do you know of a number of cases in which the girls of below 16 or below 15 have become mothers?

A. (The witness promised to give figures for the last three years.)

Q. In question No. 14 you say, women feel they must follow the custom but most would be glad if the custom were for later consummation. Is that by talk that you have got that?

A. I have asked some of them.

Q. Have you asked orthodox women?

A. I have asked two orthodox women also.

Q. You move among them in connection with such cases?

A. There are quite a number of orthodox women among whom I move.

Q. You have talks with them and you think they would be glad to marry at 14 if they were relieved of social restrictions and customs?

A. I believe so.

Q. Do you think they feel the evil?

A. Some of them do, but not all.

Q. Have you had any manner of connection with purdah ladies?

A. A great many of them.

Q. Are there many who feel like that?

A. Surely they do.

Dr. Beadon: You have seen girls in whose case consummation took place below 12. In such cases have you ever met any injuries?

A. I myself have not seen.

Q. But can you give details of one or two cases which might have occurred within the last three or four years?

A. I do not recollect any apart from deformity.

Q. What deformity?

A. Osteomalacia.

Q. Do you find osteomalacia is very common in these parts?

A. Yes.

Q. Do you get more among these young girls or grown up girls?

A. We usually get it between 13 and 15.

Q. Do you ever find osteomalacia before marriage?

A. We have not recognised it. We see a few girls that are not married.

Q. Is it true that osteomalacia is mostly among the purdah girls?

A. Yes, I think that is true.

Q. Do you think osteomalacia is commoner among the poor people or among the richer people who have purdah?

A. Our patients generally come from the well-to-do class. We have very few poor class patients.

Q. Do you think that these girls who give birth to babies at very early ages stand the deliveries as well as girls of 17 or 18, or do they meet with any troubles in deliveries?

A. Some of these young girls do stand the deliveries very well.

Q. Do you find bad effects resulting afterwards or do you think that there is no particular harm from these early conceptions?

A. Sometimes even girls of 20 do have bad effects after delivery.

Q. Do you meet cases of mental breakdown in young women?

A. I don't see it in a very young girl.

**Q.** Do you think that these young women are more liable to any special disease than the older women?

**A.** They are more liable to tuberculosis.

**Q.** Do you think that this is due to the results of unhygienic surroundings or this is due to frequent pregnancies or is the result of one pregnancy?

**A.** I think this is due to a combination of different things.

**Q.** From your experience have you found that a girl of 14 having a child and living in very good surroundings is almost sure to get tuberculosis or do you think that it does not affect the girl until she has three or four children?

**A.** I have seen many cases after the first child.

**Q.** Do you think that it is due to purdah?

**A.** I say that it is very difficult to make out whether it is due to purdah or it is due to childbirth.

**Q.** Have you met cases in which you feel justified in saying that it is due to purdah?

**A.** I don't recollect any such cases, but the impression I have got is that the childbirth has been more responsible for this than purdah.

**Q.** Do these girls come to your hospital again and again and are you able to follow up these cases?

**A.** We are not able to follow them up because they don't come again.

**Q.** Are you able to follow up the children of these young mothers?

**A.** No.

**Mr. Bhargava:** What are the evil effects of early consummation in a girl of over 13 and below 15?

**A.** I think that these evil effects of early consummation have become more or less a general defect in her after-life, i.e., after she is 25.

**Q.** Do you mean to say that there is a nervous breakdown?

**A.** Yes.

**Q.** Are these defects visible in after-life?

**A.** Yes.

**Moulvi M. Yakub:** Are you a medical doctor?

**A.** Yes.

**Q.** What is the cause of tuberculosis?

**A.** It is largely a question of hygiene but my own opinion is that early marriage is a big contributory cause.

**Q.** Is it not also due to their general weakness on account of their not getting sufficient nourishment?

**A.** Yes.

**Q.** Do you mix amongst the Indian ladies?

**A.** I have a little social intercourse with them.

**Q.** Is the opinion which you have expressed based upon your experience in the hospital only?

**A.** Practically.

**Q.** Do you know at what age marriages generally take place amongst the Mussalmans?

**A.** I cannot tell you exactly at what age the marriages take place amongst the Mussalmans but I think that from the information I have gathered from the patients I can say that very often Mussalman girls are married at 14 and after. I mean to say that early marriages are much fewer in Mussalmans than other communities.

**Q.** Is also the infantile deaths and maternal deaths less amongst the Mussalman girls?

**A.** I haven't gone into it.

**Q.** So you cannot say that if by raising the age of marriage the number of deaths increases or decreases.

**A.** I haven't gone into it.

**Mr. Kadri:** Some witnesses before us have said that high infantile mortality and maternal mortality are more due to frequency of maternity than to early consummation. They also say that if proper birth control was exercised and methods of contraception were adopted this high mortality may disappear though early marriage may continue. What is your opinion about this?

**Q.** I am not so sure about the methods of contraception and birth control. I am sure that very frequent pregnancies are harmful to the women.

**Mr. Kanhaiya Lal:** You have said that you have come across cases of maternity at the ages of 13, 14 and 15. Have you come across cases of maternity at the age of 12?

**A.** No.

**Q.** Can you tell us whether those cases occurred amongst the Hindus or Muhammadans or amongst what castes?

**A.** I haven't gone into this question. I could only judge this from the hospital statistics which I haven't worked out.

**Q.** What is the safe age for consummation of marriage according to the Indian conditions that you would recommend?

**A.** 16.

**Q.** Do you think that 16 would be equally safe for maternity?

**A.** For the present 16 will do.

**Q.** You know that at present cases of breaches of law do occur and are not brought to light and some of these cases come to the notice of medical men and women. Would these people held to bring these cases to the notice of the proper authorities confidentially?

**A.** It is rather against medical etiquette and the medical men wouldn't like to do this work, and I would not recommend it.

### **Oral Evidence of Mrs. S. K. P. SINHA, Care of District Engineer, Gaya.**

*(Patna, 5th January 1929.)*

*(Vernacular.)*

**Chairman:** Are you a delegate to the women's conference from Gaya?

**A.** Yes.

**Q.** What are the principal castes in Gaya?

**A.** There are many Kayasthas and Agarwals.

**Q.** What are the castes among whom child-marriage takes place?

**A.** It takes place among all castes.

**Q.** Are there many Maithila Brahmins in Gaya?

**A.** No, not many. There are many Sakaldevipi Brahmins.

**Q.** What is the usual age of marriage?

**A.** Among the educated the girls are married at 16 or 17 but among the uneducated marriages take place at 5 or 6.

**Q.** Is it in all castes?

**A.** Yes.

**Q.** What is the population of Gaya?

**A.** It is a very big population.

**Q.** Do you come in contact with the orthodox ladies?

**A.** Yes. After the meeting of the 8th July 1928 every week we meet.

**Q.** How many ladies come to the meeting?

**A.** About 200 or 250 ladies.

**Q.** Have you ever talked about this question to these ladies?

**A.** They are in favour of an advance. In Bihar education is backward and there are some who are against it.

**Q.** Have you met any women who are in favour of it?

**A.** I have met many women who are in favour of 16 or 17.

**Q.** And for boys?

**A.** 24.

**Q.** Would they be glad to have such a law?

**A.** Yes.

**Q.** Do young women feel like that or women over 40 or 50 feel like that?

**A.** Opinion is divided. Among the 40 or 50 years old ladies there are some who want an advance and there are others who would not like an advance. As compared with olden days there are very few who are not in favour of an advance.

**Q.** Since how long have you noticed this change?

**A.** For the last 7 or 8 years.

**Q.** What is the usual age of puberty?

**A.** Between 12 and 14.

**Q.** Is there the Gaona ceremony observed?

**A.** When the marriage takes place late this ceremony is observed along with the marriage, but when marriage takes place at 5 or 6 Gaona takes place at 8 or 9.

**Q.** Have you known of any cases of girl-mothers at 13, 14 or 15?

**A.** Yes.

**Q.** At 13 the cases must be very few.

**A.** Yes.

**Q.** What about 14?

**A.** There are many instances at that age.

**Q.** Is there any caste in which post-puberty marriage at 16 or 17 is the rule?

**A.** Among Mohammadans marriage takes place at that age.

**Q.** Do any Mohammadan girls come to the meeting?

**A.** Many have purdah. They don't mix much.

**Q.** You don't know what they feel about this matter.

**A.** I don't know.

**Q.** When does marriage take place among the Hindus?

**A.** It generally takes place at 12 or 13. 14 is the maximum that they reach.

**Q.** Have you known any case in which injury has taken place to a girl of 13 or 14 as a result of consummation at that age?

**A.** There are many girls whose backs become crooked, they get anæmia or leucorrhœa. In one case consummation took place at 11 or 12 and at 14 the child was born. The child died and girl's back became crooked. She is suffering from various diseases and her other children are born still.

**Q.** When did that take place?

**A.** 5 or 6 years back.

**Q.** Do you know of any other case?

**A.** Yes.

Q. When was that?

A. Some 8 or 9 years back.

Q. Do you know of any case within the last 4 or 5 years?

A. There are many cases like that.

Q. What about the children?

A. The children even if they survive are always suffering from some sort of disease.

Q. Have you seen a case in which a girl became a mother when very young and either the child died or she herself died?

A. I know of two or three cases. The girls being very young they do not know that they are pregnant and for want of care and caution they die. I know of a case in which the girl became pregnant in the 14th year. The child died within 2 or 3 hours of birth. The mother herself is sick and is sterile.

Q. Do you know of many such cases?

A. Yes.

Q. Where is your home and where do you reside?

A. It all depends upon my husband. I am now in Gaya but if he is transferred to some other place we will go that place. My real place, however, is in Patna District.

Q. Can you say what is the condition in villages?

A. It is worse there.

Q. Is medical aid available in Gaya?

A. Yes.

Q. And in villages?

A. It is very difficult there. The doctor has to go from Gaya.

Q. What about the children who survive?

A. They do not keep good health because of the mother being very young.

Mr. Mitra: Is there any notion amongst the ladies that the girls must be married before puberty?

A. That was the belief but that is now dying out. A very large number of women are now changing their opinion. They say that marriage should not take place before 3 or 4 years after puberty.

Q. Is the same among the villages?

A. The Kahars, Gwalas and other low castes celebrate the marriage very early. In villages I have seen very very young girls being married.

Q. Even now?

A. Yes.

Q. Do you think if a law is passed fixing the minimum age of marriage at 14 these people will think that their religion will be in danger?

A. No, they will agree to it.

Q. May we take it that these people feel the evil of early consummation and early maternity?

A. When it is explained to them they understand it.

Q. Is there any system of dowry prevalent?

A. That custom has almost died.

Q. Is it a fact that among these classes when marriage is celebrated early consummation takes place at a later age?

A. After marriage consummation soon takes place.

Q. Does the girl go immediately to the house of the husband?

A. Yes.

Q. Even when she is 10.

A. She is not sent before 12 or 13.

*Mr. Shah Nawaz:* What is the usual age of puberty?

A. Between 12 and 14.

Q. Do many marriages take place early? Does it mean that out of a 100, 80 marriages take place early?

A. 60 or 70 marriages take place.

Q. What do you think should be the age of marriage of the girl?

A. 17 or 18 because Gona takes place along with the marriage.

Q. And the boy should be?

A. 24.

Q. But it will be a very big jump to fix the age at that limit!

A. When the law is made they will submit to it.

Q. You don't think there will be any agitation?

A. But there will be the fear of the law also.

Q. What about the children of girls who marry young?

A. A girl is not fit for consummation before 17. How can the children be healthy?

Q. Supposing the age of marriage is not fixed, do you think women will agitate?

A. Yes.

Q. Do you think domestic happiness will suffer?

A. The women will have a struggle with their husbands if their voice is not heard. Now women are in favour of an advance. They want legislation.

Q. Both uneducated and educated?

A. The uneducated of course are not in favour of an advance. The intelligent and educated are all in favour of it. There are many cases in the villages even where marriages take place at 17 or 18. Among the Kaisthas marriages take place very late.

Q. You don't think girls will go wrong if the age is fixed as high as 17 or 18?

A. I think they will maintain their morals. The girls want to continue their education. To them now even the name of marriage is frightening. It is the men who are solely responsible for this practice. The women are not allowed any voice in the matter. The men will go to meetings and take a vow but still they will break it.

Q. Are you in favour of legislation?

A. Yes.

Q. Are you strongly in favour of it?

A. Yes.

*Mr. Bhargava:* What is the reason for the fact that men make a promise to marry girls late at meetings and afterwards break it?

A. The women are treated like chattles. They have no voice. They are not given education. Now that the women have taken to education and have given up purda they want their rights and want to have marriages late.

Q. Are they in favour of a marriage law?

A. Yes. Girls of 12 or 14 want to go to schools. They don't want to become mothers at the school-going age. They want to play when they ought to and be free of the responsibilities of motherhood.

Q. Generally before 16 a girl does not think of marriage at all, it is the parents who force the marriage on to her?

A. Yes.

Q. Is there the custom of widow re-marriage in your brotherhood?

A. No.

Q. Are there any widows below 15?

A. There are widows even of 10 years.



**Q.** What is the treatment meted out to widows?

**A.** The treatment is very bad.

**Q.** Women want that the age of marriage should be raised but there are some orthodox men who say that the girls should be married early before puberty. What should the Government do under such circumstances?

**A.** Those who want that the nation should progress and there should be social reform will be against child-marriage. An advance must be made.

**Q.** Among the 100 how many women would like late marriage?

**A.** At least 75.

**Q.** Including the villagers?

**A.** Yes.

**Q.** Why do the rest 25 per cent. want early marriage?

**A.** They are uneducated and of very very old ideas?

**Q.** This feeling is there since how long?

**A.** For the last 5 or 6 years.

**Q.** Do you think if there is no law in spite of the 75 per cent. women being in favour of late marriage the abolition of child-marriage will take time?

**A.** Yes.

**Q.** In the villages is there no purdah?

**A.** There is.

**Q.** Even among the agriculturists? Even among those who go out to work in the fields?

**A.** Not among those, but the wives of those people who begin to get a salary of even 25 rupees observe purdah.

**Q.** Is there any association in your part working against child-marriage?

**A.** No, I don't know.

**Q.** Is there one in Gaya?

**A.** There is none working vigorously.

**Q.** You realise merely passing of the Act won't do any good. People must know it.

**A.** Women have now begin to express themselves. The law combined with their feeling will achieve the desired result.

**Q.** Do you want that Government should carry on propaganda also?

**A.** Yes.

**Q.** If the law is passed will some women's association be able to give information to the Government of the breach of the law?

**A.** I think so.

**Mr. Md. Yakub:** For how many years past has this Conference been held?

**A.** 3 years.

**Q.** How many members are there?

**A.** I don't know how many are there this year.

**Q.** Within the last two or three years have you passed any resolutions against early marriage?

**A.** There was purda and only this year we have given up that and attended the conference.

**Q.** This year will there be any resolution?

**A.** Yes.

**Mr. Kadri:** What is the condition of women education in your parts?

**A.** There are two schools. One is an aided school and the other is a private school. In the former there are about 350 girls and in the latter there are about 125 girls.

**Q.** Out of a 100 girls of the school-going age how many girls attend schools?

A. There is a very small number.

Q. If the Age of Consent and the age of marriage is fixed at 16 and in the case of breach of the consent law the husband is sent to jail, will there be any hardship to the women?

A. They have committed a sin and they will have to be sent to jail. That will be a warning for others even though wives may suffer in one or two cases.

Q. You said among the Muhammadans marriages take place late and among the Kayasthas also same is the case. Do you find that their girls are healthier than the early marrying people?

A. Yes.

Mr. Kanhaiya Lal: You say the age of marriage should be fixed at 16 or 17. If that is not accepted then as a first step would you accept 14?

A. It should not be less than 16 in any case?

Q. If there is marriage before 16 whom would you punish? Would you punish the parents or the couple?

A. Whoever is responsible for marriage should be punished.

Q. Would you punish the priest?

A. He is not at fault. He won't come unless you send for him.

Q. Will you punish the father or the mother also?

A. Whoever is responsible for marriage should be punished.

Q. If the age is fixed at 16, up to what age would you exempt the boy from punishment?

A. Whatever the age the boy must be punished.

### Oral Evidence of Mr. RAM NARAYAN SINGH, M.L.A., Patna.

(Patna, 7th January 1929.)

(In the absence of the Chairman, Rai Bahadur Pandit Kanhaiya Lal, Vice-Chairman, presided.)

Mr. Kanhaiya Lal: Are you a member of the Bar or Legislative Assembly?

A. I am a member of the Legislative Assembly.

Q. How long have you been a member of the Assembly?

A. I am a member of the Assembly for this term.

Q. Have you been connected with any social reform movement or any public movement in the country?

A. Very little.

Q. To what part of the country you belong?

A. I belong to the Chhota-Nagpur Division.

Q. Where is your home?

A. In the district of Hazaribagh.

Q. Were you practising before or have you retired from practice now?

A. I have suspended my practice on account of the non-co-operation movement.

Q. How long did you practice?

A. Only for about a year.

Q. Are there any communities in Bihar and Orissa which practise early marriages?

A. Of course in my part of the country early marriage is generally practised.

Q. Amongst what castes and communities is early marriage practised?

A. Amongst all classes.

Q. But we are told that amongst the Kayasthas there is no early marriage.

A. Of course owing to education the age is being increased.

Q. And we are further told that amongst the Muhammadans there is no early marriage excepting the lower classes.

A. However so far as my part of the province is concerned early marriage is generally performed amongst all classes.

Q. But what about the educated classes?

A. Of course amongst the educated classes the age is being raised.

Q. Can you tell us what is the usual age of marriage amongst the educated classes?

A. In my part of the country the age of the girl is near about 12, and the age of the boy is near about 18.

Q. What is the usual age of marriage amongst the remaining classes?

A. This depends upon the pecuniary circumstances of the family. I know that in my part in several places even children aged 3 and 4 are married.

Q. To what community you belong?

A. I am a Rajput.

Q. What is the practice of marriage amongst Rajputs?

A. In my part, girls are not married very late but not so early as at the age of 3 and 4.

Q. What is the usual age of marriage amongst the Rajputs?

A. A girl is not married before 10.

Q. What about the Mithil Brahmins?

A. I have got no personal knowledge of them. I can say that from the age of 5 to 10, early marriage is practised generally amongst all the classes leaving aside the educated class.

Q. Can you tell us what is the practice about consummation of marriage? Have you got garbhadan or dwiragaman or gaona ceremony?

A. In certain castes Gaona is observed.

Q. Amongst what classes Gaona is observed?

A. Amongst the higher classes it is observed.

Q. Does it take place long after marriage or long after puberty?

A. Gaona ceremony does not concern with the age of puberty. It takes place within three years after the marriage. So it relates to the marriage and not to the age of puberty.

Q. But if puberty has not been reached, is it postponed for five or seven years?

A. I say that if a girl is married at the age of 5, Gaona ceremony takes place three years after her marriage, i.e., at her 8th year. It has no connection whatsoever with the age of puberty.

Q. When does consummation take place?

A. It is very difficult to know when consummation takes place, but I know of certain families who are very strict about consummation of marriage immediately after marriage.

Dr. Beadon: Supposing a marriage takes place at the age of 5 as you have said, is there no definite time for consummation taking place?

A. It is very difficult to know that.

Mr. Kanhaiya Lal: Can you tell us what happens amongst the Rajputs who, you say, marry their girls only after 10? Does consummation take place after three years or immediately?

A. It is not necessary that Gaona should be performed in every case. It is not generally observed but it is observed here and there.

Q. If Gaona is not performed, when is consummation of marriage permitted?

A. There is no definite practice about Gaona and very very few people are very particular about it.

Q. Can you tell me what will be the percentage who practise pre-puberty consummations?

A. About 25 per cent.

Q. Have you found any evil results following from these pre-puberty consummations?

A. Of course.

Q. What evil results have you found out?

A. Diseases, sickness and lean and thin children.

Q. You also find permanent debility or devitalization of the parts of the body.

A. Yes.

Q. Can you tell us whether even after puberty consummation takes place as a result of which mothers have suffered?

A. I think so.

Q. What is the proper age that you will recommend for marriage?

A. Not less than 14, but if it is increased, so far so good.

Q. What is the age that you will recommend as the safe age for consummation both in the interests of the mother and her possible progeny?

A. In no case before 16.

Q. Do you think that 14 for marriage and 16 for consummation will be acceptable generally to the people in this part of the country, i.e., to the Brahmins, Kayasthas, Muhammadans and Hindus of lower classes?

A. Of course in very small sections the people are very very orthodox but the number of such orthodox people is very small because people are progressing and this will be accepted by all.

Q. Are the rural classes too progressing?

A. Yes.

Q. Don't you think that there would be a large opposition from amongst the Brahmins?

A. Not all the Brahmins will be opposed to these measures but some of them will be opposed.

Q. You have told us that already there are pre-puberty marriages going on. You are aware of the present law which is at 13. So do you not think that breaches of this law do take place evidently in this part of the country?

A. I say that nobody knows this law.

Q. Can you suggest any measures for making this law effective or operative?

A. The Child Marriage Bill should be passed. There should be a legislation fixing an age for marriage.

Q. And similarly should there be also an age for consummation of marriage?

A. Yes.

Q. Supposing the age of marriage is fixed at 14 and the Age of Consent is fixed at 16, how shall we detect cases of the breach of the law?

A. You can fix definitely, accurately and effectively an age for marriage. That is the only way, and your fixing an age for consummation and other things will be of no use.

Q. Do you think that if we have social reform associations and women's associations in this country, they will help us in bringing these cases to light?

A. Yes.

Q. Would you advocate the formation of vigilance societies in Municipal and rural areas to look after and watch these cases of the breach of the law?

A. These societies may stimulate public opinion by way of propaganda but I don't think there will be any effective use.

Q. Do you think that any assistance can be derived from the caste panchayats?

A. Very little.

Q. At present the law is that up to 12 the cases are cognizable and above 12 they are non-cognizable. Suppose we raise the Age of Consent to 16 then there will be a very large margin between 12 and 16. Would you keep the present system of keeping the offence up to 12 cognizable and after 12 non-cognizable or would you advocate any change?

A. I shall prefer to making all marital cases non-cognizable.

Q. Don't you reduce the chances of detection of cases where there is even serious injury by your making all marital cases non-cognizable?

A. Unless you make the public opinion stronger in these matters, the police won't be of any use to you in this matter.

Q. Do you mean to say then that you will advocate social propaganda in order to help the observance of the law?

A. Yes.

Q. A suggestion has been made to us that these marital cases should be enquired into only by higher police officers say by the Deputy Superintendents of Police and Circle Inspectors, would that remove your objection to making the cases cognizable?

A. No.

Q. Supposing we further provide that in all these marital cases an enquiry should be made by the Magistrate before the accused is summoned or a warrant is issued against him in order to eliminate all such malicious and false cases, would that be a good safeguard?

A. I think it would be a good safeguard.

Q. Another suggestion has been made as follows:—At present according to the law cases up to 12 go to a Sessions Judge and above 12 go to a Magistrate. The suggestion is that instead of having two different forms all these marital cases can go to a matrimonial court consisting of a Magistrate and two non-officials to be associated with him in each district. Would that expedite the trial of these cases and inspire greater public confidence?

A. I think so.

Q. Would you associate these two non-officials as assessors, jurors or co-judges who can take part both in the assessment of the guilt and sentence?

A. I would have co-judges.

Q. In order to support the marriage legislation fixing the minimum age for marriage and the consummation legislation fixing the minimum age for consummation another suggestion has been made that there ought to be a system of registration of all marriages giving the names of the marrying parties and their ages in order that cases of the breaches of the marriage law or possible cases of the breaches of the consummation law might be ascertained. Would you advocate such a system?

A. Yes.

Q. If we have such a system, on whom would you place the obligation of reporting the cases? Would you place this obligation on the guardians or parents of the marrying parties or on the priests also?

A. Upon the parents or guardians of the marrying parties.

Q. Who should be the registering authority or in other words by whom this marriage register should be kept?

A. In this matter the greater the co-operation you get from the public the better will be the chances of success.

Q. Would you advocate that this authority to keep the marriage register should go to the same body who maintains the register of births and deaths,

*vis.*, Municipal Boards in Municipal areas and District and Union Boards in rural areas?

A. In my part of the province the birth and death register is kept by the police.

Q. Would you allow the same authorities to maintain this marriage register or would you advocate the Union Boards to maintain this register?

A. I would allow the Union Board to maintain this register.

Q. It has been suggested to us that these marital cases should be made compoundable with the sanction of the Court so that good relations might be restored between the husband and wife lest the husband may discard her and take back another wife and the life of the girl may be ruined. So that in suitable cases would you recommend that compounding may be made with the sanction of the Court?

A. In a caste where second marriage is not allowed there the life of the girl is ruined, and so I would allow compounding in every case and not only in suitable cases.

Q. If you make all cases non-cognizable and if you compound every case, then in that case how can we make the law effective? Would you compound a case even where a girl is below 12?

A. Yes. I say that as regards this Age of Consent law and so far as I have got experience, it has never been effective and it will never be effective. If you want to make it effective, you can only do it by stopping the child marriage.

Q. What age would you recommend for extra-marital cases?

A. Not less than 18.

Mr. Mudaliar: As regards the cases of consummation before puberty you are referring to, may I take it that some time after the marriage, the girl is sent to her husband's place?

A. Not in every case.

Q. What is the practice in the generality of cases?

A. No particular practice is observed. In many cases I find that just after marriage the girl is sent to her husband's place and she is brought back very soon say within a week or two and after two or three years she is finally sent back to her husband's place.

Q. Does this take place whatever may be the age of the girl?

A. In that case within three years after her marriage she is sent back to her husband's place.

Q. Is there any practice or rule whereby a girl can stay in her father's house for not more than three years?

A. I don't know that.

Q. When do girls generally attain puberty in this part of the country?

A. Between 12 and 16.

Q. 16 is a very late stage. Is it not so?

A. Yes, but in the generality of cases I will say it is between 12 and 14.

Q. Is there no such thing as the mother-in-law seeing that the girl is not approaching her husband even when the girl is sent to the husband's house?

A. I say that in some cases the mothers-in-law take care.

Q. Would you say that only in advanced communities or amongst the advanced families the mothers-in-law take care that the girls do not approach their husbands or in other words would you distinguish it as happening only in advanced families?

A. Only families with advanced views do take this care.

Q. May I take it then that in the other cases nobody takes care to see what happens?

A. I know of cases where they like it.

Q. Do you mean to say thereby that the mother-in-law wants the girl and the boy to meet as early as possible without any reference to the age of puberty?

A. Yes.

Q. You suggested that all cases may be compounded within marriage without any reference to the presiding Magistrate who tries the cases. Is that what you mean?

A. I have got no objection when you say that the offence should be made compoundable with the consent of the court because the consent of the court is after all a formal matter.

Q. The consent of the Court will not be a formal matter.

A. When there is a consent of the Court, the Court generally allows the cases to be compounded.

Q. But if every case is to be compounded and when the case itself comes to the Court only very very rarely at the instance of some interested party, don't you think that practically you will be making the law ineffective even to the small extent in which it can be operative?

A. If you don't provide compounding for those cases in which there is no second marriage or widow re-marriage then you are ruining the girl, but then if you make it non-compoundable, you will have to define the classes.

Q. Do you think that the mere enactment of the law would not have a greater effect if it is widely published?

A. No.

Q. At present is the existence of the law known?

A. No.

Q. Is it that even amongst the profession it is not very widely known?

A. Yes.

Q. And much more so amongst the lay public.

A. Yes.

Q. So if a wide publicity is given to the law, don't you think that would restrain people from committing these offences?

A. I think it is very difficult to get a clue of such cases.

Q. That is true, but if as you suggest the age of consummation is raised to 16, is there not naturally the danger of pregnancy taking place before this age?

A. Yes.

Q. So in such cases, so far as the detection of the offence itself is concerned, at any rate there cannot be much difficulty if the age is raised to 16. Is it not so?

A. It will be very difficult to detect these cases.

Q. As regards the complainants in these cases who do you think ought to be the complainant?

A. It is very difficult to get a complainant in this matter.

Q. Whom could the law recognize as a proper complainant in such cases?

A. The mother to be a complainant is a delicate affair. The father and the mother will not be willing to be complainants because they don't like to disclose these matters and at the same time they don't like that their son-in-law should be punished.

Q. Supposing the right of complaint is given to the general public without the offence being made cognizable, will that do?

A. I think it will be a failure.

Q. On what ground will it be a failure? Do you think that there will be many false cases or do you think that nobody will take any note of it?

A. I think there will be very few people who will take a real interest in these matters and go to Court for such offences. Only the enemy of the man rightly or wrongly will take an opportunity and with a view to harass the man will go to the Court.

Q. I thought that you are in favour of authorizing the social reform associations and ladies' associations to complain in matters of this kind. Are you not for it?

A. I think any society taking this step will be highly unpopular. I say that the child marriage should be stopped and this is the only way to remedy these evils.

Q. How far do you think that public opinion is prepared to fix an age for marriage? Would you fix it at 16 or would you prefer 14 at present?

A. I say that it must not be less than 14.

Q. But how far can the legislature go in fixing the minimum age for marriage taking all the circumstances into account?

A. As at present society stands to-day, it must not go beyond 14.

Q. Therefore we come back to the position that there must be some law which must prevent consummation or would you prefer to have only the marriage law leaving other things aside?

A. I think so.

Q. May I sum up your position like this that you finally think that the age of marriage, viz., 14 is the only remedy than all other things and that whatever may be the differences or whatever may be the situation, the legislature must face a bill fixing the age for marriage at 14? Am I right?

A. Yes.

Q. Supposing we adopt an Age of Consent legislation, in that case what is the punishment you will suggest?

A. It must not be imprisonment.

Q. Irrespective of the age of the girl?

A. Yes.

Q. In that case would you amend the present law?

A. I think the present law is a dead letter.

Q. In the case of legislation fixing an age for marriage, as regards the punishment, would you adopt the suggestion of Mr. Sarda in his Bill or would you modify that?

A. I agree to Mr. Sarda's Bill.

Mr. Kadri: You are advocating light punishment in intra-marital cases but there might be cases where the husband may be a grown-up man of 25 or a widower when the girl is only 8 or 10 and in such a case do you think that a mere fine will be sufficient?

A. I suggested this because in those castes or communities where widow marriage is allowed, there may not be much trouble.

Mr. Bhargava: But she may not be a widow. Can a deserted wife also marry?

A. Yes. Of course it is not so, in high caste Hindus. By custom amongst the low classes they are allowed to remarry.

Mr. Kadri: Supposing a girl amongst the lower classes as stated by you does not go and live with her husband again, what is the remedy? Does she go to her caste people for this release?

A. In low class people sometimes I have heard of panchayats but only rare cases go to such panchayats because they can remarry, by custom. Generally if the girl does not go to her husband, the husband takes to another wife. There is no legal or formal ceremony to be gone through to get rid of her.

Mr. Mian Md. Shah Nawaz: Can she marry again?



A. Yes.

Mr. Kadri: Supposing the girl becomes physically unfit to remarry, then don't you think that the husband deserves a more deterrent punishment than merely a fine?

A. I will not advocate anything more than a fine. If you have a marriage law, there is no necessity for all the other things.

Q. Supposing we are not able to get a marriage law passed, then we must at least see that this consent law is working effectively. Is it not so?

A. Of a population of 32 crores of people if some such cases occur, it does not matter much. Anyhow, stop child marriage, and have a marriage law passed and this is the only remedy.

Q. Can you suggest any other way excepting a marriage law?

A. There is no other way.

Q. You say that you are in favour of a matrimonial court. Do you think that there is any need for it? Are not the existing courts competent enough to try these offences?

A. The greater the co-operation you receive from the people the greater will be the popularity of the court. In the present courts we have got the jurors and assessors co-operating in dispensing justice, but at times the Judge differs from these jurors or assessors and refers the matters to the High Court.

Q. Is that the reason for setting up one more tribunal because of the occasional difference of opinion between the Judge and Jury and his reference to the High Court. Is this a sufficient ground for setting up one more tribunal and adding to the burden of the tax payer?

A. I was talking of a tribunal like this because I say that the persons constituting this court will be non-officials who can be drawn from a respectable class and this may not cost more.

Q. You mean that the Judge will be there and with him there should be non-officials.

A. If there is a District Judge, you may add these non-officials as co-Judges and the case to be decided by majority of votes.

Q. Do you think that would inspire greater confidence than a jury of 9 or 7 in trying these cases?

A. I think so.

Q. Some people have objected before us that it was only in 1925 that the Age of Consent was raised and that a sufficient time has not elapsed to warrant a further rise in the age. What do you say with regard to this point?

A. I don't agree.

Q. Some people object to any legislation in these matters because they regard them as social matters and say that such social matters should be dealt with by social propaganda, social reform and general mass education and interference by Government would be highly resented by the people. Do you agree with the views of these people?

A. No.

Q. Don't you think that there will be any resentment?

A. Resentment there will be but if the law will be sympathetically applied, the question will be solved.

Q. Don't you think that this is a matter which can only be left to social reform and general education without the aid of legislation.

A. No, I don't think so.

Mr. Yakub: You say that you are in favour of a law fixing an age for marriage. Would you make the offence under this Act cognizable or non-cognizable?

A. I will make all marital offences non-cognizable.

Q. Whom would you give the right of complaint?

A. I think the public may be given this right.

Q. If you give this right to the public, don't you think that it will create a great confusion in the country? For instance say A's daughter is married, B has certain malice against him and to-morrow he goes to the Court and files a complaint that the girl who was married yesterday is not 14 but she is 13 and then the girl is sent over to the Court, her age is to be ascertained, the lady doctor is to be sent for and so on. So will all these not create bloodshed and riots in the country?

A. We have just talked that there will be a register of births and deaths which will properly be kept and it will be a great proof.

Q. But up to this time the registers are incomplete. Even from now if you try to keep complete registers it will take 14 years before this law comes into operation. Supposing even if now the registers are complete, in any case the parties will be dragged to the Court, the age of the girl will have to be ascertained and whilst the marriage festivities are going on a summons will be coming for prosecution for marrying your girl before 13. Do you not therefore admit that all these troubles will be created?

A. Yes, I admit that all these troubles will be created but as the party concerned will not go to the Court the right of complaint should be given to the third person.

Q. Don't you think that more bitter feelings will be created between the neighbours and the people?

A. Bitter feelings are created in everything and not only in this.

Q. Do you think that such cases will be very frequent or rare?

A. Rare. Since such cases are very rare, as I say, we must have a reliable register and when the law will be thoroughly known to the people, I don't think the people will disobey the law.

Mr. Bhargava: According to you the offence relating to the marriage will be non-cognisable so that the police cannot enter a person's house when the marriage is being performed.

A. Yes.

Q. And according to you the marriages can be registered after they have been performed.

A. Yes.

Q. Therefore there is no occasion whilst the marriage festivities are going on for the summons or warrant to come in.

A. Quite so.

Q. Moreover you can provide that there will be no prosecution except after one month after marriage.

A. Yes.

Q. Do you also suggest that the right of complaint can be vested in the public as it is now?

A. Yes.

Q. And the safeguards that you want are, preliminary enquiry by a Magistrate and a deposit of Rs. 200 by the likely complainant to avoid false complaints.

A. Yes.

Q. Now in Baroda the system is this that every marriage is registered and after the marriage is registered the age of the girl is checked with the primary school educational register. After that if the registering authority finds that there has been a breach of the marriage law, then he sends on a report to the Court and that report is treated as a complaint. Would you have anything like that in India?

A. Yes.

Q. That is to say as soon as the report of the marriage is done, that is to be checked with another register and after it is found out that the age of marriage of the girl or boy was less than the prescribed age, then a report should be sent to the Court which would be treated as a complaint and then it should be proceeded with. Is that what you mean?

A. I think this will be a better course.

Mr. Bhargava : Then there are two courses open—one is that every member of the public shall be entitled to make a complaint and you will provide safeguards for vexatious proceedings.

A. Yes.

Q. And second is that all these cases whenever they come to the notice of the authorities will be sent to Court and the Court will hold a preliminary enquiry before proceeding with the case?

A. Yes.

Q. You say that marital cases may be made non-cognisable. Even cases in which the age of the girl is less than 12 may be made non-cognisable?

A. Yes.

Q. And then you said that there will be very very few cases, so that the fear in your mind that if a husband is punished he may discard his wife will be true only of very rare cases and such cases happen even without the husband being punished?

A. Yes.

Q. So that these cases may be made cognisable below 12 and non-compoundable. Am I correct?

A. Yes, but I am thinking of marriage law.

Q. You will also agree with me, I believe, that cases in which girls below 12 are violated are cases of injury and if the police does not come on the scene as soon as the matter is reported, very good evidence will disappear.

A. This question does not arise when we are talking of marriage.

Q. Even then it can arise. If the marriage of a girl below 12 takes place you will send the father of the girl to jail but the marriage is not invalidated. The father may pay the fine of Rs. 200 or 500 whatever it may be or even goes to jail but then he sends the girl to the husband and in a case of that nature it may be that a man of 25 may violate a girl of 8.

A. These are very rare cases; they are bold assumptions.

Q. But will you not provide for rare cases?

A. No.

Q. Then may I say that no unequal marriages take place in this part of the country, that is a young girl marrying a widower of 35?

A. But you are talking of the future.

Q. We are talking of things which are obtaining at present. Are there no unequal marriages in your part of the country?

A. Yes, there are.

Q. What percentage would you put them at—say 5 per cent.?

A. Yes.

Q. And in those cases generally consummation takes place at a very early date because the man cannot wait.

A. Not necessarily.

Q. Supposing a widower goes in for marriage, does he necessarily get a very young wife?

A. No, it generally happens that he gets a grown up wife.

Q. Then I understand that in your part of the country every girl is not married before 14.

A. Certainly not.

Q. Are there communities or are there advanced people who marry their girls late?

A. Of course there are communities.

Q. Will you name one or two communities?

A. I do not say communities taken as a whole but I say that is so among the people who are educated.

Q. May I take it that 10 per cent. of marriages take place after the girl is 14 years?

A. It is even more.

Q. Is it 15 per cent. or 20 per cent.?

A. I think it is more than 20 per cent.

Q. Is it true of the educated classes or is true of uneducated classes also?

A. Among the uneducated classes it is due to poverty and economic causes that they perform the ceremony late.

Q. What about widow remarriage—is it allowed?

A. Not among the higher classes.

Q. Is it allowed among the Rajputs?

A. No.

Q. What is the usual age of boys among those classes whose girls are married at 3, 4, or 5. Are the boys 8 or 9 when they are married?

A. Sometimes they are of equal age and sometimes a little higher.

Q. In regard to child marriages in which the girls are married at 5 or 6, the boys in 80 per cent. of cases are 6 or 7?

A. Yes.

Q. So that I understand that in this 80 per cent. of cases no actual consummation takes place till after say 7 or 8 years of marriage?

A. Yes.

Q. I understand that it is in those cases only in which the husband is much older than the wife that pre-puberty consummation takes place?

A. It is very difficult to know of these cases.

Q. Are you not in a position to say in what percentage of cases pre-puberty consummations take place?

A. No.

Q. It has been suggested by some people that the Government should not undertake this legislation as such legislation will excite some sort of suspicion against the Government and there will be discontent but you will feel discontented if the Government does not legislate and you will think that Government is not doing its duty.

A. Yes.

Q. You say that there should be propaganda and public exchequer should spend for propaganda work.

A. Yes.

Q. Has Government spent any money in your Province on this account?

A. Nothing.

Q. In what way would you like the Government to spend money?

A. They may have highly educated people to go about and tell the people about the evil effects of early marriage. Government is guilty of national crime in this matter.

Q. But people are to be blamed for that.

A. No, Government is to be blamed.

Q. You think it is the duty of Government to educate people.

A. Yes. And Government is responsible for neglect of duty. Whatever trouble occurs in this country Government is responsible.

Mr. Kanhaiya Lal: Because the Government is *mai bap* of the people.

A. Yes.

Mr. Shah Nawaz: Have you reason to believe that in the majority of cases marriages of girls between 12 and 13 are consummated?

A. I think so.

Mr. Mitra: Do you know that some Hindus believe that girls must be married before they attain puberty? It is enjoined by their sastras and there is a large class of men especially in villages who sincerely believe in it. Is it so?

A. Yes.

Q. You recommend 14 for marriage?

A. Yes.

Q. How will those people take this legislation—will they not consider it a violation against their religious injunction?

A. There are some who will consider it like that.

Q. Are you ready to make exemptions for them if there is a marriage law?

A. No.

Q. Don't you consider it against Queen's Proclamation of neutrality about religious matters?

A. I have never found Government neutral in this matter. What I mean to say is that when Government thinks that a particular matter is favourable to them they do it whether it is religious or irreligious but when Government thinks it does not concern them, it has the courage to say that we have to be neutral.

Q. You think if the legislation is passed by the Central Legislature then there will be no great opposition from these orthodox people?

A. We see opposition here and there.

Q. Will people not go in satagrya and say that their religion is in danger?

A. I do not think so.

Mrs. Nehru: I want to know whether the ceremony called the Gaona ceremony elsewhere is termed *dwiragaman* here. Is there any religious sanctity attached to it or are any rituals performed?

A. Yes.

Q. Is it the same as *garbhadan* ceremony performed in other places?

A. No.

Q. Has it nothing to do with consummation of marriage?

A. It generally comes to that.

Q. What is the nature of rituals that are performed on that occasion?

A. Ceremony like that which is performed at marriage is performed.

Q. Cannot you say whether it is really another form of *garbhadan* ceremony?

A. It has nothing to do with *garbhadan* ceremony.

Q. Rituals are either performed at the marriage time or at the *garbhadan* ceremony. What are the nature of the rituals that are performed at the *dwiragaman* ceremony?

A. It is very difficult for me to say but I have known that even a *mandap* is erected and the bride and bridegroom are brought together and some ceremony is performed.

Q. What I want to know is whether this ceremony authorises the consummation of marriage—whether after that ceremony liberty is given to the husband to consummate marriage?

A. After the *dwiragaman* ceremony the wife necessarily goes to the husband.

**Q.** Can you tell in cases where puberty is not taken into consideration for the consummation of marriage what other criterion is applied to Judge whether the girl is fit for it?

**A.** I do not think people consider such things.

**Q.** Generally everywhere it is the puberty which is the chief consideration; once a girl attains puberty she is considered to be fit for consummation but here in Bihar we hear puberty is no consideration. Even among the illiterate people whenever consummation takes place before puberty it is considered very bad.

**A.** It is very difficult for me to say.

**Q.** What is the condition of women's education in this Province?

**A.** Very insignificant.

**Q.** Are there municipal schools for girls in all the Districts?

**A.** Very small number.

**Q.** And in places where they do exist do girls generally go?

**A.** Not generally.

**Q.** What do you think is the percentage of literacy among women in Bihar and Orissa?

**A.** I do not think it is even 1 per cent.

**Q.** Does it differ in different castes?

**A.** Of course in higher classes more girls are educated. They are taught how to read and write but there are very few such families.

**Q.** But my question is whether it differs according to castes?

**A.** Yes; among low castes there is no education.

**Q.** What are the low castes?

**A.** Kahars, Kohlis, etc. Among them there is no literacy.

**Q.** What about higher castes—Brahmans and Vaishyas?

**A.** Very little.

**Q.** Is purdah common here?

**A.** Yes.

**Q.** Among all the castes and classes?

**A.** Among the higher classes it is very strict but villagers and chhota jati people do not observe purdah. Those high castes who live in villages observe purdah.

**Q.** Do all Mohamedans observe it?

**A.** Yes, higher classes of Mohamedans observe purdah.

**Dr. Beadon:** Would you mind telling us one or two cases that may have come to your notice within the last 5 years in which injury resulted to mothers and children due to early motherhood?

**A.** I cannot give you any details.

**Written Statement of Mr. ARIKISHAN SINHA, Pleader, and an Ex-Member, Bihar and Orissa Legislative Council, Muzaffarpur.**

*Extract from letter.*

I must frankly confess that I am not a medical expert. My experience is derived from my 23 years' career at the Bar and my public life extending over a period of more than 20 years. I have travelled nearly in all the Pro-

vinces of India and have seen almost all the important places having political and religious importance except Simla. I have been the Secretary of the Bihar Provincial Hindu Sabha for many years before 1919. Since 1918 I have been connected with the Bihar Provincial Kisan (Peasant) Sabha as its General Secretary and in that capacity I was examined by the Southborough Committee and the Royal Agricultural Commission as well as by two important Committees at Delhi in 1922 and 1928. The Bihar Government also was pleased to nominate as a Member of the Shahabad Riot Committee in 1920 which was appointed in pursuance of a resolution moved in the Bihar and Orissa Legislative Council and also a Member of the Bihar Tenancy Bill Committee in 1921 as an outside Member. I am an ex-member of the Bihar and Orissa Legislative Council. I have been for a long time the Secretary of the Bhumi-har Brahman Community being most predominant and influential in Bihar as Landlords and Peasants as well as in the Eastern Districts of United Provinces with His Highness the Maharaja Bahadur of Benares as its Head. The Honourable Sir Ganesh Dutt Sinha belongs to this community. This community is very conservative in social and religious matters and very strictly tries to adhere to the marriage questions are concerned. There is a large number of Maharajas and Rajas and big Zemindars in this community and the number of Peasants class is also very large. This community is found in Bengal also with the Maharaja Bahadur of Lalgaol as its Head in Bengal and a very large number of educated men in that Province. We have got inter-marriages in Bihar, United Provinces and Bengal. Therefore any change in the Age of Consent Law will greatly affect this community. These are my sources of experience in social and religious matters. I am not a specialist in Dharma Shastras but have read Sanskrit up to College Classes and know Sanskrit fairly well.

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1. There is absolutely no dissatisfaction with the state of the Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code among the Hindu community and specially the Bhumi-har Brahman community and the Peasantry of Bihar, United Provinces and Bengal so far as I have been able to gather.

2. (1) The Hindu community of Bihar, United Provinces and Bengal is very conservative so far as the marriage questions are concerned. The conservativeness is much more in the three Dwija classes, namely Brahmins, Kshatriyas and Vaishyas. They marry their girls up to the age of 12 as that is the maximum marriageable age prescribed by the Shastras and send their girls to the houses of their husbands. Girls in Bihar, United Provinces and Bengal attain the age of puberty at the age of 12 and show signs of menses. At the age of 13 many girls become pregnant. No orthodox Hindu father will consent to increase or extend the marriageable age of his girl beyond the period when girl shows signs of menses and that is 12 years and thus violate the Shastric injunction and incur the sins prescribed by the Shastras. Besides this when girls show signs of menses and their monthly courses, i.e., the discharge of menses commences, the husbands must co-habit with their wives otherwise they will be considered sinful of taking away the life of a human being. Such on the Shastric injunctions and no Hindu specially orthodox will consent to violate such injunctions. For these circumstances and others to be urged at the time of oral evidence I am strongly of opinion that the present Law as to the Age of Consent should be retained.

(2) There is no necessity of any advance in the Law for the reasons given above.

3. Crimes of seduction or rape are not very frequent in Bihar. But there may be some cases here and some cases there and which cannot be entirely stopped even by the most stringent law. For example the law says that a man will be hanged for murder but still murder has not been stopped. Seduction cases are more frequent in Bengal. But their causes are more social than legal. For example in Bihar and United Provinces there is a social custom of widow re-marriage among the Sudra classes. But the social

customs of Bengal are so very stringent that they would not allow such widow re-marriage except the Chandals and Sweepers (Mehtars). In our Province and United Provinces, Koiris and many other such communities have got widow re-marriage customs but their castemen in Bengal do not enjoy this social privilege. So in most cases in Bengal seductions of young widows are willing seductions. But this can be mended by social reform in Bengal and not by Legislative enactment. In my visits to Bengal I have several times impressed upon my Hindu brethren of Bengal to follow the social customs of Bihar and United Provinces of the corresponding communities such as if the Gope community can permit widow re-marriage in Bihar and United Provinces, why should then the Gopes of Bengal consider it a sin and should not be at par with the members of their community in other Provinces as they all claim to be Nandbansis and Krishnabanshis. Much social propaganda is required on this point in Bengal and it is hoped Dr. Moonje will take up this subject.

The Amendment Law of 1925 has made no difference in preventing or reducing cases of rape outside marital state or improper seduction of girls for immoral purposes wherever such crimes are to be found specially in Bengal. In such cases I would agree if the Age of Consent be raised by legislation and punishment prescribed for such offences. But I would again repeat my old story that even the raising of the Age of Consent will not entirely stop such offences wherever they are found to be frequently committed. But I would not oppose the raising of the Age of Consent outside the marital state.

4. My answer to all the 3 questions in this question is emphatic "No". Rather I may go further and assert that people do not know whether such a change has taken place in the Law so far as their social customs are concerned and that cohabitation with his own wife has been made penal. Cohabitation generally by the husbands with their wives takes place before the 13th year and after 12th year and marriages are consummated before such age and that there has not been any putting off the marriageable age beyond 13 as a result of the Amendment of 1925. What are the agencies to give information to the courts against the breach of the law on this subject within the marital state? The relatives of the husband and wife will not give such information. Strangers have no sources of information. Marriageable age has not been prescribed by Legislation superseding the Shastric marriage law. Therefore the Amendment of 1925 within marital state is ineffectual and inoperative. I would propose steps to be taken by social reform party to stimulate public opinion in this direction by propaganda work. Legislation on this subject will be useless.

5. The usual age of puberty of girls in my part of the country is 12. It slightly differs in different societies. It depends upon the nourishment a girl gets. So in high class people girls of 12 become full of puberty but in poorer people and low class people this age of puberty might extend up to 13 years of age. But in lower classes of people, I mean Sudra classes, where widow re-marriage is allowed by custom, marriages take place even when the girls are below 11 or 12 but Gaona or consummation of marriages take place when the girls are beyond 12.

6. (1) Not generally before the Age of Puberty.

(2) Yes after the Age of Puberty if the discharge of menses commences in the girls.

(3) Yes, before the girl completes 13 years provided her monthly course begins.

These two cases occur between husband and wife.

No such cases come to court. At least during my career at the Bar for the last 23 years I have not come across any such cases.

7. I certainly attribute the practice of the early consummation of marriage before or at puberty to religious injunctions. The Shashtra speaks of marriages of girls between 8 and 12 years of age as meritorious and after that it says that the girls become "Rajashwala" (having regular course of the discharge of menses). The Shashtra says that parents will be sinful if



they fail to marry their girls before 12. I do not think it necessary to quote the Sanskrit verses with the names of authors but if required I will place the Sanskrit verses before the Committee in my oral evidence with the names of the Authors.

8. The word "Garbhadan" ceremony is not spoken of in my part of the country. But it is called "Gaona" ceremony here. Gaona ceremony is not now prevalent among the Dwija classes where there is no custom of widow re-marriage. But it formerly existed. The society has abolished it during the last 50 years owing to the public opinion being strong in favour of its abolition. But it still exists among the Sudra classes where girls are married even before 8 and there is a custom of widow re-marriage among them. But the Gaona ceremony among them also is performed when the girls attain the Age of Puberty that is 12 years. Among the high class people girls are generally married at the age of 12 and sent away to their husbands' house at the time of marriage. It coincides with the consummation of marriage. It is generally performed after the attainment of the Age of Puberty and at the age of 12 and before 13.

9. I do consider the attainment of puberty as a sufficient indication of physical maturity for justifying consummation of marriage. I would not in any case extend the period beyond 13. The society will resent any further extension. I have already said that I am not a medical expert but I can speak of facts and social customs. So whether consummation of marriage before 13 will be injurious to the health of the girls and their progeny can be better answered by medical experts. But the Hindu society will not consent to the extension of any further period of consummation of marriages of girls in violation of the Shastric injunctions.

10. At the age of 12 and 13 when the monthly courses of girls commence.

11. My answer to this question is that I have not come across any such cases. But cohabitation seldom takes place before the Age of Puberty, i.e., 12 and pregnancy takes place after the age of 12. In some cases it takes place at the age of 13. If pregnancy takes place at the age of 13 and a child is born at the age of 14 then no harm is done to the health of the girl or her progeny. But if a child is born when the mother is more than 14 it is much better. Generally a child is born after the age of 14. In my own family the age of my own daughter-in-law was 12 in 1922 when she was married with my son and God has blessed her with a son in October 1927 at the age of 17. This is generally the age at which girls get children, i.e., from 16 or 17. The elderly ladies of the house will not allow cohabitation unless the girls attain the Age of Puberty and the boys are more than 16.

12. I do not consider that early consummation of marriage and early maternity is responsible for high maternal and infant mortality. But it is due to want of proper nourishment for the girls owing to the chronic poverty of Indian people. They do not get milk for want of pasture lands for cows to graze on. The price of milk has become very exorbitant. During my younger days I had plenty of milk both from cows and she-buffaloes and we children of those days, could drink as much milk as we could and our mothers pressed us often to take as much milk, butter and curd as possible and we were very stout and strong thereby. But now fashion and high living in outward dresses have taken place for the good and beneficial nourishment. This is all due to want of pasture lands for cattle to graze and other economic drainage by which people are starving and what to speak of good milk and butter. I must frankly tell you that I was a son of a Peasant living in village and I could enjoy a large quantity of milk and butter daily but now my sons being sons of a Senior Member of the Bar and a well-known public man of Bihar cannot dream of even the one-fourth comforts of life which I had during my younger days. So early consummation of marriage or maternity is not responsible for high maternal and infant mortality or other reasons affecting the intellectual or physical progress of the people but the want of proper nourishment for fathers and mothers of the babies owing to shortage of milk, butter, ghee and high prices thereof and the chronic poverty of the people of India. Give them good nourishment as in olden

days and Indian mothers and fathers will again produce robust sons and daughters. India can again produce warriors like Bhim and Arjun if Indians get good nourishment.

13. There has been no development of public opinion in my part of the Province for extension of the Age of Consent in marital and extra-marital cases since the Amendment of the Law in 1925. Rather the public opinion among the Hindus are strongly opposed to any further extension so far as the marital relations are concerned as this will be affecting their marriage customs and usages sanctioned by Shastras. As regards extra-marital cases we are not much opposed if the Age of Consent be further extended although there has been no public agitation on this subject also. But no Hindu will oppose any extension in extra-marital cases. As to the last part of the question I may say that there has been no public demand in my part of the country for any extension of the Age of Consent after the Amendment of 1925 either for marital cases or extra-marital cases.

14. Yes, the ladies in our part of the country desire early consummation of marriage of their children. But the word "early" is ambiguous. Ladies desire consummation of marriage of their girls at the age of 12 and not earlier and when the boys are generally 16 or over. They do not desire consummation of marriages when the girls and boys have not attained the Age of Puberty, i.e., 12 and 16. They are not in favour of consummation of marriages of their infant children.

15. Yes, difficulties are generally felt in cases and offences under Sections 375 and 376 of the Indian Penal Code. Courts are mostly guided in such matters when the age of the girl is to be determined by medical opinions. But medical opinions in such cases are mere surmises. In one case before a Deputy Collector in 1927 the point to be determined was the age of a lady. I appeared for one party in that case. That lady was examined both by the Civil Surgeon of Muzaffarpur and the lady Doctor to find out her actual age and both differed widely. The Civil Surgeon in his evidence on oath said that no Doctor can be precise in finding the actual age when the question comes between 10 years. That is he cannot precisely point out the age of a lady between 10 and 20. The age pointed out by him may be 5 years more or 5 years less: This is medical opinion. So we cannot rely entirely upon medical evidence for the purposes of Sections 375 and 376 of the Penal Code.

I would suggest one measure but that is beyond the scope of this Committee. I would suggest the due preservation of Birth and Death Register at the Headquarter of each District and the evidentiary value of such papers should be fixed by Legislation.

16. Not in my opinion if the Age of Consent be raised to 14 or above. Now the present Age of Consent according to Amendment of 1925 in marital cases is 13 and it is proposed now to raise it to 14 in marital cases and from 14 to 16 in extra-marital cases. Now if a case within marital state arises. The prosecution may say that the age of the girl is below 14 and the defence will say the age is above 14. Up to 13 years the Amendment of 1925 allows. The difference will be of one year. Who will determine the actual age of medical opinions on the subject are not accurate as pointed out by me above. Horoscopes are not kept in each and all family. Birth and Death Registers are not kept for a long time. So in my humble opinion, instead of the difficulty or margin of error being materially reduced or minimised in determining the actual age, if the Age of Consent be raised to 14 or above, will be increased by several times. In my opinion this raising of the Age of Consent is full of difficulties specially in marital cases and so should be abandoned altogether.

17. Yes. I am in favour of such separation of extra-marital and marital offences into different offences. In extra-marital cases I would allow the sentences fixed by the law to continue. But in the case of marital cases I would suggest a punishment of 2 years' imprisonment in case the wife is below 12 years of age and in case in which the wife is above 12 years of age

and below 13 an imprisonment of simple nature for one month or a fine not exceeding Rs. 50. The trial in marital cases either below 12 or above 12 and below 13 should be held by a Jury.

18. My opinion is that the trial in marital cases should be held by a Jury whether before the Court of Sessions or District Magistrate or any other first class Magistrate. As regards the trial for extra-marital cases I would prefer Jury trial but I would not press for it where there is no Jury system at present.

19. In marital cases there is bound to be the collusion of the relations of the girl and the husband and no amount of legislation on the subject can prevent it. Any further steps for its prevention will cause greatest possible resentment and annoyance to the people. So I would not suggest any safeguard against such collusion. But I can suggest safeguards against improper prosecution and extortion. In marital cases I am of opinion that no cognizance of such cases should be taken if the girl is above 12 and below 13 unless the nearest relations of the girl complain about such cases. This is the only safeguard I can propose in marital cases. In extra-marital cases also I would suggest that cognizance should be taken only on the complaint of the nearest relations of the girl raped if her age is above 13. I am also of opinion that a lighter punishment should be prescribed if the girl raped is above 13 and is a consenting to cohabitation with a stranger other than her husband.

20. I do not think that any penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. I would personally prefer the latter alternative. This will be more beneficial and in course of time volume of public opinion will gather round it. In my opinion the public opinion will certainly prefer the latter with alacrity if the marriageable age is reasonably fixed by legislation and is not much opposed to the Shastric injunctions. But I would not support Mr. Sarda's Bill in toto. If he can fix 13 as the minimum marriageable age of girls and 16 for boys it would have my entire support. The public also would support such a modified change. But frankly speaking the public is not at present prepared to support any further extension of the law of consent than that prescribed by the Amendment of 1925. This Amendment of 1925 is sufficient for the public specially the Hindu public to swallow up without any murmur. I would support Mr. Sarda's Bill if modified as pointed out by me but I am strongly opposed to Dr. Gour's Bill.

21. I am certainly not in favour of the strengthening of the penal law to secure the object in view. I would prefer the progress of social reform by means of education and social propaganda. I have already indicated in my opinion that any further enactment to raise the Age of Consent in marital cases will cause much resentment and bitterness in the country among the orthodox Hindu public whose sentiments ought to be respected and not flouted. However, Mr. Sarda's Bill if modified will be considered harmless and less objectionable. There is a great demand for social propaganda for raising the marriageable age of boys and abolition of Dowry system among the Hindus. Besides this there is greater demand for social reform in Bengal among the Hindu community in order to bring them at par with the Hindu community of Bihar and United Provinces. For example there is a custom of widow re-marriage among the Sudra classes in Bihar and United Provinces but there is no such custom in Bengal. The result is that a large number of young Hindu widows passively consent to be kidnapped and seduced by Mahomedans of Bengal. I do not blame the Mahomedan kidnappers so much as I blame the Hindu social drawbacks. Here is an opportunity for Dr. Gour to do some social service to the Hindus of Bengal in company with Dr. Moonje and Pandit Madan Mohan Malaviya and thus earn the everlasting gratitude of the Hindu public. In social matters we should look to the society for reform by educational and social propaganda and should not run up to the Legislatures as this is likely to spread misrepresentations among the ignorant orthodox and conservative masses. I am personally in favour of social reform but by propaganda and not by Legislation. I trust the sentiments of the orthodox and conservative Hindu

community will be duly considered by this committee which has the privilege of having Sir Moropant Vishwanath Joshi, Kt., K.C.I.E., as its Chairman and Rai Bahadur Pandit Kanhaiya Lal as its Member.

\* \* \* \* \*

अष्ट वर्षा भवेद्गौरी नव वर्षा तु रोहिणी ।

दश वर्षा भवेत्कन्या अत उर्ध्वं रजस्वला ॥ १ ॥

इति पराशर स्मृतिः ।

*English Translation.*

A lady of eight years old is called Gowri, of nine years old, Rohini, and of ten years old, Kanya. But when her age exceeds ten, she becomes liable to monthly discharge or menses.—(Parashar Smriti.)

2

गौरी ददन्नाक पृष्टे वैकुण्ठे रोहिणी ददन् ।

कन्या ददन्वृक्ष लोके शैवे तु रजस्वला ॥ २ ॥

इति मरीचि स्मृतिः ।

*English Translation.*

A father giving his daughters of eight, nine, and ten, in marriage, entitles himself to a place in Heaven. But by marrying a menstruant lady, he draws upon himself eternal damnation and is thereby condemned to Hell.—(Marichi Smriti.)

3

प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।

मासेमासे रजस्तस्याः पिता पिबति शोणितम् ॥ ३ ॥

यमस्मृतिः ।

*English Translation.*

By keeping his daughter unmarried after she has aged twelve, a father is alleged to be drinking the blood of his daughter's menses, from month to month.—(Jama Smriti.)

4

माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।

अयस्ते नरकं यान्ति इह्वा कन्या रजस्वला ॥ ४ ॥

पराशर स्मृतिः ।

*English Translation.*

Parents and the eldest brother go to hell, should they happen to look on an unmarried menstruant daughter or sister, as the relation may stand with the lady so circumstanced.—(Parashar Smriti.)

उर्ध्वं दशवर्षा या कन्या प्राग्रजोदर्शनात्तु सा ।

गान्धारी स्यात् समुदाय्याच्चिरं जीवितुमिच्छता ॥ ५ ॥

*English Translation.*

A man wishful of longevity may marry a girl who has become menstruant and is well on towards her eleventh year such a girl is denominated Gandhari.

6

In Kama Sutra of Vatsayn, it is written that a lady must be married in her twelfth year, even when she has not become menstruant, because in that age she secretly becomes so, though there be no apparent manifestation of it on her exteriors.

**Oral Evidence of Mr. ARIKISHAN SINHA, Pleader, Muzaffarpur.**

*(Patna, 7th January 1929.)*

*(Rai Bahadur Pandit Kanhaiya Lal presiding.)*

*Pt. Kanhaiya Lal:* Were you a member of the Bihar and Orissa Legislative Council?

A. Yes. I entered the Council by a bye-election.

Q. Are you a member of the Bhumihaar Brahman Community?

A. Yes.

Q. What is the population of that community in Bihar and Orissa?

A. About 20 lacs. It is one of the wealthiest communities in Bihar and Orissa. They are largely zemindars and peasants.

Q. They are agriculturists mostly and some of them occupy professional and other high positions?

A. Yes.

Q. You have been secretary of the Bihar and Orissa Provincial Hindu Sabha?

A. Yes.

Q. For how many years?

A. For 3 years before 1919.

Q. Since 1918 are you connected with the Provincial Bihar Kisan Sabha?

A. Yes, I am the general secretary.

Q. You were also a member of the Shahabad Riot Committee in 1920?

A. Yes.

Q. Were you also a member of the Tenancy Bill Committee?

A. I was a member nominated by the Government to represent tenant classes.

Q. Have you also been for sometime secretary of the Bhumihaar Brahman Community.

A. I have been secretary for a pretty long time of the Bhumihaar Brahman Sabha. I am also president of the Bhumihaar School and ex-member of the governing body of the Bhumihaar Brahman College, Muzaffarpur.

Q. Is there any association of landlords in Bihar?

A. Yes, Bihar and Orissa Landholders' Association.

Q. Are you a member of that association?

A. I am not a member of that association because I am secretary of the Kisan Sabha.

Q. Can you tell us whether the Bhumihaar Brahman Sabha has considered this question of the age of marriage and the age of consummation at any conference or meeting?

A. Yes, they have considered. So far as the question of boys is concerned their former resolution was that boys should not be married before 16 but now they have come up to 18.

Q. And for girls?

A. The question of age of marriage for girls was not considered.

Q. Has the question of consummation of marriage also not been considered?

A. No, it is a very conservative and orthodox community.

Q. Can you tell us what is the usual age of marriage among them?

A. In my community it is 12 or 13 for girls.

Q. Is the age of marriage rising?

A. Considering the whole of the Hindu community here my community is a predominating community. The age is not rising but rather I may say in some cases early marriage is prevailing.

Q. It was not prevailing before but now they have taken to early marriage. Is that what you mean?

A. Yes some people have taken to early marriage; I have heard there was not so much early marriage so far as boys are concerned but now there is early marriage.

Q. When are the girls married now?

A. 11 or 12.

Q. Is it generally before puberty?

A. Yes.

Q. Is it due to the notion that according to Shastras marriages should take place before puberty?

A. Yes.

Q. Is that notion still strong in the minds of the people or is it weakening?

A. It is still strong but the difficulty is of securing suitable husbands.

Q. Is there any other difficulty?

A. One is of securing suitable bridegroom and the second is of arranging money for giving dowry and *tilak*.

Q. Are marriages being delayed for these causes?

A. Yes, in some cases.

Q. Are marriages being delayed beyond puberty?

A. In some cases but they are not looked upon with favour.

Q. But are they condemned.

A. So far as my community is concerned, the difficulty is this. Suppose the age of girl advances we cannot get suitable husband and therefore in some cases the girl becomes older and the boy becomes younger which is very bad.

Q. If a man marries his daughter after puberty he is not socially ostracised?

A. No.

Q. Nor is he denounced or condemned for his inability to marry before puberty?

A. No. But there is one difficulty that if the girl is to be married after the Age of Puberty where is the husband to be found. I have myself experienced that difficulty. I had to marry my niece and after a good deal of

trouble I got a suitable bridegroom but the age of the boy and the girl was the same. Both were 12 years old.

*Q.* What is the usual age of consummation in your community?

*A.* Marraige is generally consummated at the age of 13 or 14 but in some cases it is before 13.

*Q.* Have you noticed any evil results following early consummation or early maternity?

*A.* I cannot give you any definite cases.

*Q.* Have you come across any cases in which women or children have become weak?

*A.* No.

*Q.* What age would you recommend for marriage if there were to be a marriage legislation?

*A.* I have no objection if the age of girl is fixed at 13 and of the boy at 18. Although I have given 16 for boys in my memorandum I am prepared to go up to 18.

*Q.* Mr. Sarda's Bill proposes 14 for girls would you support it?

*A.* My reason for putting it at 13 is that it will cover the penal law and there will be no necessity for Dr. Gour's Bill. Personally I have no objection if the age is raised to 14 so that there may be no necessity of law as contemplated by Dr. Gour.

*Q.* Have you no objection to 14 being fixed for marriage?

*A.* No.

*Q.* If 13 is fixed for marriage cases may occur where persons may break the law and marry the girl at 12 and pay any penalty or undergo any punishment as the law may award and if there is no law fixing the age of consummation after 13 consummation will proceed. Would you therefore recommend that if 14 is fixed for marriage 14 should also be fixed for consummation?

*A.* I have no objection.

*Q.* Do you know of any other communities in this Province in which early marriage is practised?

*A.* There is only one community, the Kayastha community of Bihar, among whom late marriages are practised. They do not marry any girl before 14 and any boy before 18.

*Q.* The other communities, viz., Rajputs, Sarvaiya Brahmans, Mythil Brahmans, Sakadwipi Brahmans who are among the higher castes have early marriages at 11, 12 or 13.

*Q.* What about the Vaishas and Khatriis?

*A.* Their custom is the same as in the higher classes. The custom among the lower classes is very bad. They marry boys and girls at 4 or 5 but there is widow re-marriage among them which is not allowed in the higher classes.

*Q.* What are the lower classes?

*A.* Kurmis, Kahars, Gwalas, Chamars, Mehtars, Sunars, Lohars, Carpenters, etc.

*Q.* What is the practice among the Mohamedans?

*A.* In my part of the country there are two classes of Mohamedans. One is higher class of Mohamedans, they marry their girls at the age of 15 and boys at the age of 18 and after. Among the lower classes of Mohamedans it is the same as among lower classes of Hindus.

*Q.* What are the higher classes of Mohamedans and what are the lower classes?

*A.* Higher classes are Shahs, Sayad, Pathan, Moghal. Lower classes are Julas, Dums, Kabaris, Dhobis, etc.

*Q.* What about the Rajputs, Kshatrias and Agarwals—what is the age of consummation among them?

A. Consummation generally takes place after puberty, i.e., first appearance of menses. Before menses it is very rare. That is the practice among the higher and lower classes but among the lower classes Dwiragaman ceremony takes place at a very advanced age.

Q. Does not Dwiragaman ceremony take place among the higher classes?

A. It is not general. It takes place here and there.

Q. What is the suitable age according to you when consummation should be permitted after menses. Should some period elapse in order that there may be no injury to the girl and the girl may be properly developed?

A. My idea is that if marriage takes place after 14 no difficulty will arise.

Q. As regards question of detecting cases of breach can you suggest any measure for bringing cases to light?

A. It is very difficult to detect cases.

Q. Except where there is injury to the girl?

A. Yes.

Q. Would you recommend that social reform organisations or women organisations should be authorised to look after these cases and watch them?

A. That would be very tedious task.

Q. Do you think they can be safely entrusted with this kind of work?

A. Ladies of our province are very conservative.

Q. But they have broken the purdah now.

A. They have broken the purdah in name only.

Q. Would you entrust social reform organisations with this work?

A. I would prefer that these matters should be left to the ladies association if they are willing to take up the work.

Q. Would you recommend the formation of vigilance societies or panchayats consisting of representatives of all castes in towns and villages to look after these cases and prevent breaches?

A. There is no harm but it would be a very difficult task.

Q. Have you got village panchayats?

A. There are Union Boards.

Q. Will they do educative, preventive and detective work?

A. Yes. It would be better if they are entrusted with this work but Union Boards are not in existence now.

Q. At present the law is that cases under 12 are cognizable and above 12 they are non-cognizable. Would you maintain this procedure or would you make any alteration?

A. I think the present law should remain, but the sentence should be lighter.

Q. What sentence would you recommend?

A. Fine. There should be no imprisonment.

Q. There is a husband 40 years old and he has sexual intercourse with a girl of 13 and the girl receives severe injury, would you let him off with a fine?

A. But there is nothing in the law that marriage with old men may be prevented.

Q. If you fix one or two years imprisonment, the judge can use his discretion. If a boy of 15 has sexual intercourse with a girl of 13 he may let him off with a warning and if a man of 40 commits sexual intercourse with a girl of 13 he may be given one or two years imprisonment.

A. Personally I am of opinion that young men should not be sent to jail.

Q. Upto what age would you exempt the boys from punishment?



A. Up to 18 the boys should be exempted.

Q. And in such cases would you make the parents or guardians responsible?

A. Yes, they ought to be responsible. Personally I am opposed to this law because I think the marriage law will settle everything. We should proceed cautiously.

Q. If you recommend the same age for marriage and for consummation another law is needed to support the marriage law because if a man breaks the marriage law and undergoes the penalty, consummation will take place.

A. Considering all these things I suggested that 13 should be the age of marriage and consummation but if the age is to be fixed at 14 parents will have to be held responsible.

Pt. Kanhaiya Lal: In order to restore good relations between the husband and the wife would you like that these cases may be made compoundable?

A. After 12 they may be compounded.

Q. Only with the sanction of the court?

A. Yes.

Q. It has been suggested that all these cases should be investigated only by higher officers of the police like the Deputy Superintendent or the Circle Inspector. Do you think that will be a proper safeguard and would that obviate the necessity of making these cases non-cognizable?

A. It would be much better if these cases are investigated only by higher officers of the police.

Q. In that case would you make them cognizable?

A. No.

Q. At present cases upto 12 go to the Sessions and above that go to the magistrate. In order to have one forum would you recommend that there should be a matrimonial court consisting of a magistrate and two non-officials?

A. I will recommend it with the aid of a jury.

Q. If you have two non-officials would you require a jury?

A. Then there would be no necessity.

Q. Do you think that would inspire greater public confidence and expedite the disposal of such cases?

A. It would be much better if these cases are tried by the Sessions Judge with two non-officials as a matrimonial court.

Q. Would you associate these two non-officials as assessors, jurors or co-judges?

A. I would like them to be co-judges.

Q. Assessing both the sentence and the guilt?

A. Certainly.

Q. It has further been suggested that in order to support the marriage legislation and legislation about consummation there should be a system of registration of marriages, i.e., reports of all marriages being made giving the names and ages of the marrying party, so that we may find out where the law is broken or is likely to be broken.

A. But if there be no birth register how would you compare? This birth register is destroyed after a few years.

Q. Would you recommend that it should be permanently maintained?

A. Yes.

Q. Would you also like that we should permanently maintain a register of marriages?

A. Yes, certainly.

**Q.** Who should maintain this register, the Union Board, the District Board or the Municipal Board or the Executive authority?

**A.** The Municipal Boards or the District Boards would be much better.

**Dr. Beadon:** Your Sabha has recommended that the age of marriage of boys should be raised. Why do you recommend raising the age of boys?

**A.** There is early marriage and will it not check it?

**Q.** Don't you think it is necessary to check early marriage among girls?

**A.** Among the high class people it is thought that the death of the boy may take place early and the girl might have to remain widow for a long time and therefore they prefer to marry them at a later age.

**Q.** Has it no reference to the education of boys? Is it not the idea that the boy should be free to continue his education?

**A.** That is not the only thing.

**Q.** Is there no idea of Bramhacharya with regard to boys?

**A.** That is not the reason.

**Q.** What is the state of education of boys in your community?

**A.** People are taking to education. They are learning.

**Q.** Do they go to colleges?

**A.** Yes.

**Q.** How many B.A.'s have you for instance?

**A.** Graduates and lawyers may be about 200.

**Q.** Are these Biharies or people who have come from outside?

**A.** They are Biharies.

**Q.** One of the reasons of early marriage you said was that the girls cannot get suitable husbands. Is there a good number of widowers marrying for the second or third time?

**A.** Not large. The demand of a widower is much. If a boy becomes a widower at the age of 16 or 18 he will charge much more money.

**Mr. Bhargava:** Who charges money?

**A.** The parents of the boy. I know of one instance among my own relations. The boy became a widower at 22 or 23. He had passed his M. B. examination. People are offering him much.

**Dr. Beadon:** Could you give us an idea as to why the lower classes marry so early at 5 or 6?

**A.** It is because of social custom. If they do not marry early they will be looked down upon in their own community.

**Q.** Would you like to have a law preventing old men from marrying?

**A.** Yes.

**Q.** Would you say that they should not be allowed to marry or not marry a girl below a certain age?

**A.** After 55 a man should not be allowed to marry. If allowed he should be married with a woman of a very advanced age.

**Q.** A girl of what age? What is your idea of 'advanced age'?

**A.** Not less than 18.

**Mr. Shah Nawaz:** What is your opinion regarding fixing the age of marriage? Do you want to fix it at 14 or 13 as you say in your statement?

**A.** I would like 13. If 13 be adopted there would be no need of Dr. Gour's bill.

**Q.** Would you go upto 14?

**A.** I am prepared if there be demand, but I would like 13.

**Q.** Do you think that your community which I believe consists of 20 lakhs will accept your proposal?

**A.** They will accept 13.

**Q.** Do you think many of the girls will become pregnant at 14?

11. After 13 there may be many.

Q. Do you think it is a desirable state of affairs for the girls to become mothers at 14?

A. This is social custom.

Q. I want to know whether this is desirable.

A. My own opinion in this matter is there should be social propaganda and there should not be any hard legislation.

Q. The question is, 'is this desirable'? Don't you think it is a patent evil for a girl to become mother at 14?

A. Personally I don't like. It is not a desirable thing.

Q. Then would you go upto 14?

A. Personally I would.

Q. Would you go to 15 personally?

A. I won't go upto that.

Q. Do you think it is a desirable state of things for a girl to become mother at 15?

A. I don't think any harm will come out of it.

Q. Do you think that pre-puberty marriages and consummation soon after puberty is due to some religious injunction?

A. Yes.

Q. Do you think it is absolutely incumbent on you to marry the girl before puberty and that there should be consummation soon after?

A. I have given you the translation of the shlokas. We have to respect the Shastras. It is not absolutely necessary in the sense that the man will be excommunicated if the marriage does not take place before puberty.

Q. Don't you think it is due to old custom rather than any injunction of the Shastras?

A. It is due to old custom based upon the Shastric injunction.

Q. Don't you think that these Shastric injunctions are honoured in breach rather than in obedience?

A. In some cases they are honoured in breach and in some they are honoured in observance.

Q. What do you think is the opinion of the women regarding this question?

A. I have not consulted the women.

Q. Don't you think girls are materially affected by this early consummation and early marriage?

A. I have already pointed out that one of the difficulties is this that if we raise the age of marriage of girls it will be very difficult to find suitable husbands.

Q. Why has your society not paid the least attention to the condition of girls?

A. This is on account of social customs.

Q. Do you think that they should have no voice in the selection of their husbands?

A. We are not so much advanced as yet.

Q. Don't you think they should have some sort of independence regarding this?

A. Under the present circumstances of the society I don't think it will be desirable and no amount of legislation will force the society to accept this.

Q. I want to know whether you would give any right or any voice to the girl.

A. I don't want that. That would be revolution in the Hindu society.

Q. Don't you want any legislation?

A. No.

Q. Would you have a law preventing the drinking of liquor by legislation? Would you like that all shops selling liquor should be closed?

A. There is no analogy between the two.

Q. It is also considered to be an evil. Are both not social evils?

A. In the question of marriage law we are guided by the Shastric injunctions and that is a different thing altogether.

Q. There is no difference of opinion so far as the Shastras go. Is that the only reason on which you base your opposition?

A. No.

Q. Are you guided by the Shastras in the matter of drinking?

A. Sura Pan is allowed in the Shastras, but that is a different thing. Here there are Shastric injunctions and I have given the particular verses on which I base my opposition.

Q. Supposing there is a difference about the interpretation of the Shastras, and supposing that this Committee comes to the conclusion that the injunction about marriage is not binding, and that it is an antiquated thing, do you consider that your women would consider it an evil, but at the same time stick to it, because it is a Shastric injunction?

A. The ladies will not be able to exercise any discretion in this matter. The matter should be left to the discretion of the parents of the boy and the girl.

Q. You say you never consulted women. Then how do you say that ladies in your part of the country desire early consummation of marriage of their children?

A. I have said so because that is what I know.

Q. Do you think that it is right that girls of 12 should be consummated?

A. The age of consummation might be raised to 13 or 14. I have merely given you the facts as they are when I say that ladies do desire consummation for their daughters at an early age. I am not prepared to make any further statement on that point.

Q. Are we to understand that at the present time most of the girls are really consummated between the ages of 12 and 13 no matter whether they have attained puberty or not?

A. As soon as the girls are married they are sent to the house of their husbands, and most of them are consummated before puberty.

Q. Are they consummated independent of the question of puberty?

A. Yes; between 12 and 13.

Q. You say that marriages are consummated before 13 in most cases. Are we then to understand that the law is being violated in this part of the country?

A. The law is not very strictly observed. In some cases it is not at all observed.

Q. What about the dowry system here? Who pays the dowry?

A. The girl's father.

Q. Are the dowries very heavy?

A. Yes; in my community it goes up to Rs. 50,000.

Q. What about the lower classes? Is there dowry system amongst them also?

A. Yes; they also pay amounts ranging from 200 to 2,000 or more. Everybody has to satisfy the parents of the boy.

Q. You have said nothing about extra-marital relations in your statement. Would you like to go to 18 so far as such cases are concerned?

A. I have not considered the matter, but I have no objection to your fixing any age in regard to that. It does not affect society so much.

Q. You say that the marriageable age should be fixed at 14. Who do you think will make the complaint?

A. That is the difficulty.

Q. Nobody cares for the law, and nobody may care.

A. I think that the President of the Union Board would be the best person to make the complaint.

Q. But Union Boards are not found everywhere in India. They are found only in some villages, and there are none in others.

A. Then the President of the Union or Panchayat might make the complaint.

Q. Will you not have private complaints?

A. But then there will be vexatious or frivolous complaints.

Q. Supposing we ask for a deposit of two or three hundred rupees from the complainant before lodging the prosecution, would you think that it is a sufficient safeguard?

A. Yes; then I will agree to that.

Mr. Mitra: May I take it that you are a great respector of the Shastras so far as marriages are concerned?

A. Yes.

Q. Will you quote the sloka which allows 13 years so far as marriage is concerned? Do not the Shastras allow only 10 to 12?

A. I do not know of any Sanskrit verse which authorises marriage after 12.

Q. Then do you not by your own suggestion go against the Shastras?

A. Yes; but I do so in order to satisfy the present demands of the society. In view of the fact that there is already a penal law fixing the age of consummation at 13 I go up to 13.

Q. Do you not realise that once you go beyond 12 you violate the Shastras?

A. Yes; I think that public opinion requires modification in this respect.

Q. What is then your objection to 14? Will not then your objection remain the same?

A. Yes.

Q. From your standpoint you say that the objection from the Shastras should be neglected because you yourself fix the age which is not supported by the Shastras.

A. Whether it is against the Shastras or not, I would prefer fixing the age at 13 in order to improve the social condition of India. I would therefore support 13 for girls and 18 for boys.

Q. Is it then your personal view that the Shastras should not stand in our way in fixing the age of marriage?

A. Yes.

Q. In paragraph 2 you say "For these circumstances and others to be urged at the time of oral evidence". What are the others you refer to?

A. Later on I have given the Sanskrit verses from Manu, Yagnavalkya and Vashishta, and also the opinion of the learned pandits of Mithila.

Q. Do you think that the attainment of puberty is a sufficient indication of physical fitness to justify consummation of marriage?

A. Yes; that is my opinion.

Q. You say that girls in your part of the country generally attain puberty at the age of 12. Do you think that a girl of 12 will be fit for consummation?

A. Yes.

**Q. Have you heard of girls attaining puberty at 11?**

**A.** Yes; I know that it is so according to medical jurisprudence. I know of a case in the High Court in which a Judge, a Bengali Brahmin, held that a girl at 11 can become pregnant. He held that a particular girl could have been the daughter of a particular woman because the lady could have given birth to a child at the age of 11.

**Q. Do you seriously think that irrespective of the age, a girl as soon as she attains puberty is physically fit for consummation?**

**A.** No; that is why I say that as a compromise I would accept 13.

**Q. The Shastras say that marriages should take place between 8 and 10, and you are for fixing the age of marriage at 13 and consummation also at 13. Then how can you say that it is a compromise when actually you are going against the Shastras?**

**A.** I do it in order to meet the demands of the social reformers.

**Q. What would you consider the ideal age for marriage? What is your personal opinion about it?**

**A.** My personal opinion is that it should be 12 to 13 for girls and 18 for boys.

**Q. Apart from the Shastras and social reformers, what is your personal opinion on the matter?**

**A.** I would have 13 for girls and 18 for boys.

**Q. What about consummation? Do you think that immediately after puberty consummation should take place, or do you think that some period should elapse between puberty and consummation?**

**A.** I do not want that the Shastric injunctions should be violated.

**Q. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality in Bihar?**

**A.** My view from my personal experience is that it is not. I have said that the deterioration is due to economic conditions like poverty and bad nourishment of the people.

**Q. Do you think there is any child mortality amongst the rich people? They have enough money, and they get their girls married early, and there is no poverty or bad nourishment.**

**A.** The mortality amongst them might be due to other diseases, but not due to early maternity.

**Q. Have you experience of the villages also?**

**A.** Yes. I myself live in a village.

**Q. What is the system of registration of births in the villages?**

**A.** Information is given to the village Chaukidar. He notes down the birth in his own register. He then goes to the Thana and gives information to the Thanadar. These are again collected and a book is kept in the head-quarter of the District.

**Q. Is it binding on the parents to report births?**

**A.** It is not binding on the parents. It is the duty of the Chaukidar to go and find out.

**Q. Do you know the system in the towns?**

**A.** I do not know, because I live in the villages.

**Mr. Bhargava:** In paragraph 19 you say that in extra-marital cases "a lighter punishment should be prescribed if the girl raped is above 13 and is a consenting party to cohabitation with a stranger other than her husband". Supposing a girl of 15 years of age gives her consent, what punishment would you give the man?

**A.** Not more than 6 months.

**Q. If the girl is 16?**

**A.** Then, according to your suggestion, no punishment should be given.

Q. Why? You just told us that in extra-marital cases you would go even so far as 18.

A. I said so because I am not very particular about that matter.

Q. What is then your personal opinion as a lawyer?

A. My personal opinion is that we can go beyond 16.

Q. What punishment would you give the offender if the girl has consented?

A. Between 15 and 16 I would give a punishment of fine.

Q. You know that in kidnapping cases (section 363) if a person elopes with a girl of 16 he is liable to a long term of imprisonment. When that is so you say that if a person has cohabitation with a girl above 13 he should be sentenced to 6 months only. Is that then your considered suggestion?

A. After having considered the matter my opinion is that it should not be less than that for kidnapping.

Q. At present even if a stranger cohabits with a girl below 14 with her consent, he is liable to transportation for life or rigorous imprisonment. Do you want it to be changed to 6 months?

A. I would let the law remain as it is.

Q. Therefore do you think that up to 14 the punishment might remain as it is and from 14 to 16 the punishment should be the same as for kidnapping?

A. Yes.

Q. Would you like that in cases in which the girl has eloped with a stranger with her own consent and there is the prospect of a marriage between the girl and the stranger the case might be allowed to be compounded?

A. The case should not be compounded.

Q. No other person will marry the girl if it is publicly known that she has been seduced by another. If the parties are agreeable to marriage will you allow the case to be compounded?

A. Supposing the man belongs to another community?

Q. But the girl cannot be married if it is known that she allowed herself to be ravished by a stranger. Instead of therefore making her a prostitute, would you not marry her to a man of another community?

A. In no case am I prepared to make it compoundable.

Q. There are certain communities in India who are not very conservative or orthodox, and these people allow love marriages to take place. If you do not allow extra-marital connections to be compounded, it follows that you are really making for circumstances in which love marriages will become impossible, and if you make it compoundable you will allow such marriages.

A. In these matters I am expressing the opinion of people who hold conservative views.

Q. You say that in well-to-do families boys are generally married before 12, so that it is difficult to find boys who are unmarried after that age. In your own case you say that you could not find an unmarried boy after 12.

A. Generally after 14 it is difficult to get boys.

Q. What is the age of the girls when they are married?

A. 10, 11 and 12.

Q. So that the difference between the ages of the boy and the girl is only about 2 years.

A. Yes.

Q. Do you not think therefore that if you raise the age of marriage of girls to 14 there will be no such difficulty?

A. My point is that unless you raise the age of the boy there is no use in raising the age of the girl.

Q. If you raise the age of the girls, will the difficulty of finding suitable husbands for the girls be greater, the same or less? How will it affect the difficulty of finding suitable husbands? Do you not think that your present problem will then be solved?

A. Yes.

Q. We have been told that if we raise the age of marriage of girls, the dowry system will go away. What is your opinion?

A. I do not think it will go away.

Q. Do you think that if you fix the age of marriage of boys at 18 the number of boys available for marriage will be greater?

A. So far as I have been able to gather I do not think it will make much difference in the dowry system.

Q. You have said that in some cases the age of the girls is greater than that of the boys. Do you think it will be 5 per cent. of the cases?

A. It will be less.

Q. Are you opposed to this?

A. Certainly.

Q. Do you think that the only panacea for this evil is the fixation of the age of marriage by law, and there is no other remedy for it?

A. Yes; the reformed society is already demanding it.

Q. How can you meet this evil?

A. I am prepared to recommend the fixation of the age of marriage by law.

Q. Do you think that it is an evil that widowers and grown-up men should marry young girls?

A. I think that old men should not be allowed to marry at all.

Q. Supposing you raise the Age of Consent in marital cases to 16 or 18 do you not think that no man above 40 would like to marry a young girl and this evil will cease?

A. Yes; I think that unequal marriages would cease in that case.

Q. According to you fixation of the Age of Consent would be a remedy for this evil?

A. Yes.

Q. Why then do you have a fling at the social reformer? You yourself admit that marriage legislation is the remedy.

A. I say that they should attend to other important matters.

Q. Are you aware that in Vedic times there were no early marriages, and on the fourth day of marriage consummation did take place? Are you aware that in Vedic times there was no Gaona ceremony?

A. I am not a Vedic scholar and I do not know what happened in Vedic times.

Q. If I tell you that there are Vedic texts which speak of marriages of fully developed girls, and that it was enjoined in the Shastras that consummation of marriage should take place on the fourth day of marriage, would you agree with me that the Gaona ceremony is a ceremony of recent growth?

A. Yes.

Q. Is it not going out of use now?

A. Yes.

Q. From that it follows that marriages took place when girls were fit for consummation, so that if we should follow the real Shastric injunctions we should go back to the Vedic times. In those days the girls themselves recited the Mantras, whereas girls of 13 cannot recite the Mantras. So that



do you not think that it is not against our religious injunctions to marry girls late?

A. But at what age?

Q. At the age at which girls are fully developed and are capable of understanding the implications of becoming a mother and a wife.

A. I have not read the Vedas. I have given you all the authorities I can in support of my statement.

Q. Is it a fact that in your experience during the last 50 years marriages of boys have come to be performed earlier?

A. Yes.

Q. What are the causes which have led to this reversion to early marriage?

A. I think it might be due to social customs.

Q. Do you think it is so with regard to girls also?

A. Girls generally marry at 12.

Q. But we were told that girls marry at 5 and 6.

A. It is only in the lower classes.

Q. Do you think the law will create some dissatisfaction amongst the lower classes?

A. Yes; but that system should be abolished.

Q. Therefore may I take it that you are in favour of some marriage law?

A. Yes; but I am opposed to any consent law in marital cases.

Q. If I tell you that medical opinion is dead opposed to the Age of Consent being at 14, and that in the opinion of the medical witnesses if a girl becomes a mother before she attains the full age of 16 years the progeny and herself are bound to be injured, would you revise your opinion? That is the opinion of Susrut also. He says that if a girl conceives before the age of 16, the child will die in the womb, or if it is born it will be very weak.

A. But medical opinion is not acceptable to a vast majority of orthodox people, and I am one of them.

Q. Would you not rely on this evidence?

A. Not that; social customs and social rules which have been in existence from a very long time will not enable us to accept that view.

Q. Do you think 15 will be acceptable, because then maternity will occur only about 16?

A. If it is 14, public opinion will partly accept, but not beyond 14. A large majority of conservative opinion will oppose 16.

Q. Have you seen cases in which girls of 13 or 14 have given birth to children, and the children are weak and the mothers have either died or are in course of dying a slow death?

A. I have not come across such cases.

Q. Have you seen Kayastha girls?

A. They generally marry after 14.

Q. Are they not stronger than girls who are married at 10 or 12?

A. I do not think they are stronger than Brahman or Rajput girls.

Q. Kayastha girls generally live in towns and the Bhumiari girls live in the villages. Have you taken this fact into consideration?

A. No.

Q. You say in your statement in answer to question 15 there are difficulties in ascertaining the ages of girls between 10 years. If the age of the girl is fixed at 15 or 16 do you realise that the chances would be greater?

A. I am not a medical expert. What I have come across is that in a certain case a lady doctor and a male doctor differed fundamentally. The Civil Surgeon said that it is difficult to find out the ages within a margin of 5 years on each side.

Q. What do you mean by saying that the Birth and Death Registers should be preserved at the headquarters of each district and the evidentiary value of such papers should be fixed by legislation?

A. The only difficulty now in such cases is the age.

Q. Do you want a presumption of truth to be attached to these documents?

A. No; I mean that it must be admissible in evidence, but it should not be conclusive.

Q. You say that in marital offences the complainants should be the nearest relations of the girls. At present when any person can move the court; do you know of any cases in which this power has been abused by the general public?

A. As I have already said, I have altered my opinion, and would let the right of complaint remain in the public provided the complainant is required to pay a deposit as security before the prosecution is launched so that there might not be unnecessary harassment.

Mr. Kadri: You say that a large number of young Hindu widows passively consent to be kidnapped and seduced by Muhammadans of Bengal. How many cases of such kidnapping have come to your notice?

A. I have read about them in the newspapers, and I cannot say exactly how many cases I have come across like that.

Q. You say "I trust the sentiments of the orthodox community will be duly considered by this Committee". What is it that you would like the Committee to do?

A. I said that when I was referring to Shastric injunctions. I said that the Shastric injunctions should be respected, though side by side there should be social reform.

**Written Statement, dated the 6th August 1928, of Mr. GAYA PRASAD SINGH, B.A., B.L., Member, Legislative Assembly, Muzaffarpur.**

1. The time has come for making an advance on the present law. This is partly due to the awakened conscience of the educated people; the physical deterioration of the race which is partly attributed to immature or premature sexual connection, resulting in the birth of weak offsprings, etc. The so-called orthodox opinion, which insists on looking every such thing, from a purely religious point of view, has been to a considerable extent, reconciled to the change.

3. Not frequent; but such cases from their very nature, do not always come up to the surface.

4. It is difficult to dogmatise on the point. But such public opinion as we have, is no doubt stimulated, and actual marriage, or consummation of marriage, is being put off.

5. I think at the age of 13—14 generally.

6. No. Such cases rarely come to Court.

7. Early consummation of marriage is not attributed to religious injunction. But early marriage is sometimes so attributed; and the text commonly quoted is from Parasar:—

A literal translation of the above is that at 8 years of age, a girl is called *Gauri*; at her 9th year, she is called *Rohini*; at her 10th year, she is called *Kanya*; and beyond that age she is called *Rajswala* (period of menses, or puberty).

On the other hand, I can give religious texts, forbidding early consummation of marriage.

8. Yes; Gaona takes place generally before the consummation of marriage.

9. No, generally after the age of 17 years. But in such matters, legislation must proceed on cautious lines.

10. Generally 16 years, or thereabout.

11. For an instance, *vide* an Allahabad High Court case, reported in the "Leader" of Allahabad, dated the 15th June 1928.

12. Yes, this is one of the main causes; but there may be others also.

13. Public opinion is not general, but is articulate among the educated classes.

14. Not generally.

15. Such difficulties are natural; but cases of this nature are not common.

16. This is more than I can say.

17. Yes, it would be desirable to do so, the punishment in the case of marital offence being lighter as proposed in the Bill.

18. Not necessary.

20. Fixing the minimum age of marriage by legislation, would, I think, be more in consonance with public opinion. But since sections 375 and 376, Indian Penal Code, are already there, their amendment on progressive lines seems to be desirable.

21. Progress of social reform by means of education and social propaganda is no doubt desirable; but it is sometimes necessary to give a fillip to social reform by strengthening the penal law.

## Oral Evidence of Mr. GAYA PRASAD SINGH, M.L.A., Muzaffarpur.

(Patna, 7th January 1929.)

*Chairman:* Are you a member of the Legislative Assembly?

A. Yes; I represent the Muzaffarpore and Champaran districts of the Tirhut Division.

Q. How long have you been a member of the Assembly?

A. Since 1924. This is my second term.

Q. Have you been connected with any other public movements?

A. I am a member of the Indian National Congress. I am connected with the All-India Kshatriya Maha Sabha.

Q. Has your Maha Sabha considered this question of a suitable age for marriage?

A. They held a meeting in Darbhanga this Christmas week. The question of raising the age of marriage was considered but no definite age has been fixed as yet. But we have been exhorting the people to increase the age of marriage.

Q. Have you similarly tried to raise the age of consummation?

A. That naturally follows.

Q. What is the usual practice amongst Kshatriyas so far as marriage is concerned?

A. We do not marry our girls early. The past history of India shows that amongst us and the Rajputs there was Swayamvar. That shows that we did not marry our girls early.

*Q.* When are marriages celebrated at present?

*A.* I have got a niece of 16 who is still unmarried, and I have got a daughter of 14 who is also unmarried.

*Q.* What about the uneducated people?

*A.* They marry early. It is so especially amongst the Mythil Brahmins. The educated classes marry later. The Maharajah of Gendal has one daughter who is 45 but unmarried.

*Q.* What is the practice here as regards consummation? Is it performed immediately after marriage, or is there a Gaona ceremony?

*A.* There is Gaona ceremony.

*Q.* When does the ceremony take place?

*A.* It takes place sometime after marriage. But it differs with different people.

*Q.* Is there any period fixed?

*A.* No.

*Q.* Is it always after puberty?

*A.* Yes. It is generally after puberty.

*Q.* Do you think it is generally about 14 or 15?

*A.* It may be 14 or 15.

*Q.* Amongst the Mythil Brahmins what is the age of marriage?

*A.* In Tirhut they marry early.

*Q.* What is the usual age of marriage amongst them?

*A.* It is usually 10 or 11. They generally rely upon the Sastrie injunctions.

*Q.* What about the Sudras?

*A.* The Sudras marry early. I find that my own servants marry early. I have been impressing upon them the desirability of marrying their girls late. But they marry their girls at 10 or 11 and sometimes even at 6, 7 and 8.

*Q.* When does consummation take place amongst them?

*A.* I cannot tell you the period.

*Q.* Have you come across evil results following early consummation?

*A.* There is physical deterioration on the part of the girl and the children are weaklings and puny.

*Q.* Would you like to have legislation to remedy this evil?

*A.* Yes; I would.

*Q.* Will you have marriage legislation or consent legislation or both?

*A.* I would prefer marriage legislation. But since these sections are going to be revised, I would recommend the raising of the Age of Consent also.

*Q.* What age would you recommend for marriage?

*A.* 14 for girls and 18 for boys as in Sarda's Bill. But I would not like to commit myself on this point exactly, because some of the orthodox people come to me and say that they rely on the Slokas. But personally speaking I would go further than 14 for the age of marriage of girls, and I can give you texts also in support of them. I append a list of authorities that bear on this question.

*Q.* If the Legislature decides to fix the age of marriage, what is the minimum which you would like to be fixed?

*A.* I do not want to commit myself on this point in view of the fact that the question is coming before the Assembly. But personally I am prepared to go even to 16, though in view of the orthodox opposition I would agree to 14.

*Q.* If there is no Age of Consent Law, the marriage law might be broken, and consummation of marriage might proceed, and the marriage law would

become inoperative. Would you therefore have a consent law to support the marriage law?

A. If you fix the age of marriage at 16, there is no difficulty. But I would like to keep the two together, namely, marriage and consummation, at 14.

Q. At present up to 12 the cases are cognisable, and above 12 non-cognisable. Would you retain the law as it is or would you suggest any alterations?

A. I have not given thought to it, and therefore I would not like to commit myself on the point.

Q. Would you like that the enquiry should be entrusted to a senior officer of the Police like the Deputy Superintendent?

A. Yes; or preferably to the Magistrates.

Q. Do you think that breaches under the present law of the Age of Consent occur?

A. Breaches of the law are rare.

Chairman: Can you suggest any measures for bringing these cases to light?

A. No.

Q. Would you like to have vigilance societies to look after and watch these cases of the breaches of the law?

A. I would agree to have vigilance societies provided we get the right sort of men.

Q. Do you think that the Union Boards will help us in this matter?

A. Sometimes these Union Boards are manned by people who may have their likes and dislikes and sometimes it might lead to miscarriage of justice.

Q. Would you recommend that in all marital cases a preliminary enquiry should be made by the Magistrate before he issues a summons or a warrant or a notice so that false and malicious cases may be eliminated?

A. Yes.

Q. Another suggestion has been made to us as follows:—At present cases under 12 go to a Sessions Judge and cases above 12 go to a Magistrate. The suggestion is that with a view to have only one forum we might have a matrimonial court consisting of a magistrate and two non-officials to associate with him as jurors, or assessors or co-judges. Would you recommend this suggestion? Do you think that such a court will inspire greater public confidence?

A. To some extent.

Q. Would you associate the non-officials as jurors, or assessors or co-judges who can take part both in the assessment of the guilt and sentence?

A. They may be associated as co-judges and if this is not possible, at least they may be associated as jurors.

Q. In order to support this marriage law it has been suggested that we ought to have a system of registration of marriages giving the names of the marrying parties and their ages. Would you be in favour of such a system?

A. I wouldn't be against it provided we get the right sort of agency to do it.

Q. We have got the agency which does the registration of births and deaths. Would you like to have the same agency to do this work or would you like to appoint Registrars for this purpose?

A. I haven't considered all this. I want a suitable agency to do this work.

Mr. Mudaliar: What do you think is the state of advancement amongst the women of this province?

A. They have been advancing to some extent but the women of Bihar have not very greatly advanced in education.

Q. Are they advanced so far as the social ideas are concerned?

A. To some extent they are.

Q. Do you think that a considerable percentage of women are taking an interest in these movements?

A. Not a great many amongst what you call the lower classes or the middle classes.

Q. But even amongst the literate classes, say, amongst the official class or the Bhadralog class, would you say that the women are taking an interest in this movement apart from the men?

A. There is not a very large number of women who are taking the initiative.

Q. But do they respond in sympathy with these ideas at least?

A. They do respond to a certain extent.

Q. Do you think that women in this province at least amongst the higher classes have considered the question of a marriageable age or a consent age?

A. Apart from our discussions and what appears in the newspapers I don't think we hold any regular meeting on this point to arrive at any decision.

Q. Have you any reason to think that women are following these questions with attention or in other words are they really taking an interest in a question like this?

A. To some extent they are taking an interest.

Q. Do you think that they will agree to an age being fixed for marriage as also to consummation being postponed?

A. I should think so.

Q. Had you any opportunity of testing their opinion privately?

A. I asked my wife and others and they are agreeable.

Q. Do you think that women will welcome a change in the law and they wouldn't stand as obstacles in the way?

A. I don't think so.

Q. It has been represented to us by men witnesses that the chief difficulty in advancing these measures comes from the women folk at home. Is that your reason?

A. I don't think that the most serious objection comes from the women.

Q. As regards the consummation do you think that consummation before puberty is to any extent practised in this province?

A. It is very difficult to say that, but it is not practised to a very great extent.

Q. Amongst the lower classes do you think this is practised to an appreciable extent?

A. Not to a great extent. They marry early but consummation does not take place at once.

Q. What is the practice amongst them? Supposing a girl is married early is not the girl kept in her mother's house?

A. Yes.

Q. When is she sent to her husband's house?

A. There is no fixed age at which it is incumbent on the part of the girl to go to her husband's house.

Q. There may not be any fixed age but has that any relation to the development of the girl or anything of the kind?

A. Amongst the lower classes even when the girl is sent back to her husband's house, I don't think that consummation takes place very shortly.

Q. Do you suggest that after the girl goes to the husband's house, the husband and wife do not live as husband and wife for some time?

A. Yes.

Q. When do you think that the girl is generally sent to the husband's house. Does it depend upon the demand of the husband or anything of the kind? What is the criterion?

A. There is no special circumstance in this. Sometimes the boy's father might require the girl to come back to assist in the household affairs or other circumstances might require the girl to be sent back to the husband's house.

Q. Is there a ceremony before the girl is sent to the husband's house?

A. There is a ceremony called Gaona.

Q. Is it merely performed because the girl has to go to her husband's house?

A. Yes.

Q. Has this ceremony any connection with the development of the girl or with the attainment of her puberty?

A. Gaona takes place sometimes after marriage but it does not invariably depend upon the health or anything like that.

Q. As regards the punishment in case of an infraction of the Age of Consent Law, what is your idea?

A. My idea is that lighter punishment should be awarded in case of marital relations and heavier in the case of extra-marital relations.

Q. How far would you go in marital cases. Would you change the present law or would you retain it with reference to the punishment?

A. I would retain it.

Q. If you advance the age after 13, what would you fix the punishment?

A. The punishment might correspond with the severity of the offence. I cannot tell you a definite reply.

Q. May I put it to you in this way that a bare fine would do or would you include an imprisonment also?

A. I would certainly have some sort of imprisonment and I leave it to the discretion of the magistrate.

Q. Would you permit these cases being compounded?

A. I haven't thought of it.

Mr. Kadri: What age would you fix in extra-marital cases?

A. I should like to have it at about 16.

Q. Would you not go up to 18 because there is no sympathy for these evil doers?

A. It might go up to 18.

Mr. Bhargava: Now you see that there are some classes in India who believe that they should marry at the ages of 5, 4, 6 and 7 whenever the Goddess speaks. Surely you don't have any sort of sympathy with such a religious notion.

A. There is no such superstition in our part of the country. I have never heard of such a thing in fact.

Q. So that you will only give respect to reasonable religious notions and not to any sort of wild notion like this. Is it not?

A. Yes.

Q. If you fix the age at 14 for marriage, do you think that there will not be much opposition?

A. I don't think so but I do not know what the orthodox people might have to say in the matter.

Q. But there are so many people in your community educated and there are persons more educated than the rest who have also their hold on these people, how do you expect an opposition from these orthodox people?

A. You know that Pandit Madan Mohan Malaviya has fixed the marriageable age at 12 and he doesn't want to go to 14.

Q. But there are equally good leaders who want to raise the age of marriage to 14.

A. My trouble is this. I come from a country where there are Mithil Brahmins. The Shloka "Ashta Varsha.....etc." is ingrained in their minds and they consider anything against it as irreligious.

Mr. Shah Nawaz: Is pre-puberty marriage very common in this part of the country?

A. They are common.

Q. Are marriages of girls consummated before 13?

A. I wouldn't say that.

Q. When are they consummated?

A. Generally after 13.

Q. Are they consummated soon after puberty?

A. That depends when the sign of puberty appears. I don't know what the medical authority fix as the age of puberty.

Dr. Beadon: In your answer to question No. 11 you have cited a case reported in the "Leader". Can you tell us anything that has occurred to your own personal knowledge in which the girl has been injured?

A. Nothing has come to my knowledge.

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**Appendix to the Oral Evidence of Babu GAYA PRASAD SINGH, B.A., B.L., M.L.A., given in Patna on the 7th January 1929, before the Age of Consent Committee.**

चतस्रोऽवस्थाः शरीरस्य वृद्धिर्यौवनम् सम्पूर्णता किञ्चित्परिहाणि-  
चेति । तत्राष्टोऽष्टाद्वृद्धिः । आपञ्चविंशतेर्यौवनम् । आचत्वारिंशत-  
सम्पूर्णता । ततः किञ्चित्परिहाणिचेति ॥

There are four stages of the body :

वृद्धि, यौवनम्, सम्पूर्णता, परिहाणि ।

Up to 16 years is the stage of वृद्धि (development); up to 25 years is the stage of यौवनम् (youth or puberty); up to 40 years is the stage of सम्पूर्णता (completion of the organs); and after that is the stage of परिहाणि (decay).

सुश्रुत (By Dhanwantari, ch. 35).

पञ्चाविंशे ततो वर्षे पुमाच्चारोत षोडशे ।

समत्वागत वीर्यो तो जानीयात् कुशलो भिषक् ॥

The boy of 25 years, and the girl of 16 years, have their semen equally developed, and the conception is for the good of both.

(By Dhanwantari, ch. 35).



अनयोऽयं वर्षायाम् प्राप्तः पञ्चाविंशतिम् ।  
 यद्याधत्ते पुमान् गर्भं कुक्षिस्थः सविपद्यते ॥  
 जातोवान् चिरञ्जीवेद् जीवेद्वा दुर्बलेन्द्रियः ।  
 तस्मादत्यन्तं बोलायां गर्भाधानं न कारयेत् ॥

(सुश्रुत—अध्याय १०) ।

If a girl of less than 16 years of age, conceives by a man of less than 25 years of age, the pregnancy results in abortion; if a child is born, it won't live long; if it lives, it shall be of weak organs (i.e., it shall remain a weakling for life); therefore conception should not be allowed in early young age.

त्रिणि वर्षाण्युदीक्षेत कुमार्यन्मतीसती ।  
 जर्ध्वंतु कालादेतस्मा हिंदेत सदृशंपतिम् ॥

(मनु—अध्याय ८, ८०) ।

A girl should desire marriage 3 years after getting menses, with a man of equal qualifications.

ब्रह्मचर्येण कन्या युवानं विन्दत पतिम् ।

After preserving Brahmacharya, when a girl attains youth, she should desire marriage.

[अथर्ववेद—काण्ड १०, अध्याय ३, मन्त्र १८] ।

N.B.—The period of Brahmacharya is up to 25 years of age, as the minimum.

## Oral Evidence of Syed MUHAMMAD YUNUS, Bar.-at-Law, Patna.

(Patna, 8th January, 1929.)

Chairman : Are you connected with the Bihar Muslim Association?

A. Yes. I am the Vice-President of the said Association.

Q. I understand that as a Syed you have studied the Muslim law.

A. I know a little.

Q. For how many years have you been at the Bar?

A. For about 24 years.

Q. Do you think that on these questions, viz., the raising of the Age of Consent and the fixing of the minimum age of marriage, there are any Quoranic injunctions which we shall have to consider as coming in the way of any legislation?

A. I don't think so.

Q. Please look to our Question No. 20 and tell us which of the two remedies would be more effective?

A. I think the latter, namely, fixing the minimum age of marriage, would be more effective. I must say that the Islamic law on the subject of the marriageable age as laid down in Chapter IV of the Quoran and by subse-

quent authorities differs in various cases according to various schools. According to Abu Hanifa the marriageable age is 18 years and according to others it is 15 years. That does not show that marriage before that period is prohibited.

*Q.* Is marriage permissible before that?

*A.* It is permissible even before that.

*Q.* In this part of the country in your experience as a lawyer, what do you think of the present law of the Age of Consent?

*A.* I think, Sir, that this age 12 or 13 is such an age that there is considerable difficulty in obtaining accurate medical opinion as to the age and this is one of the points which may be considered necessary in raising the Age of Consent.

*Q.* What age do you think would remove this difficulty?

*A.* I think 16 would remove this difficulty.

*Q.* Have you any reason to think that the law has been broken which is now at 13 in many instances in this part of the country?

*A.* It is almost impossible to detect such offences.

*Q.* Do you think that they take place?

*A.* I think so.

*Q.* Do they take place both amongst the Muhammadans and Hindus or only amongst the Hindus?

*A.* Amongst both the Muhammadans and Hindus they take place.

*Q.* Are there child marriages amongst Muhammadans here?

*A.* There are, but not to a very large extent.

*Q.* Do these fathers and grand-fathers as guardians effect a large number of marriages?

*A.* Not a large number but they do a considerable number of marriages.

*Q.* Will you say that this will be something like 25 per cent. of the total number of marriages?

*A.* I think that amongst the Muhammadans now the tendency is to marry their girls at a little advanced age and there is that tendency and therefore it is perhaps less than 25 per cent.

*Q.* So it is only in these cases, viz., the 25 per cent. of the cases that you can speak of the law being broken below 13? Is it not so?

*A.* Yes.

*Q.* Do you think that if the law of the Age of Consent itself is raised merely and nothing else, it will be effective?

*A.* I don't think so.

*Q.* Can you not suggest any method for making it effective?

*A.* I will be opposed to it for two reasons. Firstly that it will not be effective and secondly it is undesirable that any step should be taken to make it effective more stringently and create frictions in families.

*Q.* Would you rather therefore recommend a law of marriage?

*A.* Yes.

*Q.* What age would you recommend for marriage?

*A.* According to the general consensus of opinion of Muslims there will be no difference of opinion if it is fixed at 15.

*Q.* Don't you think that there will be dissatisfaction if it is fixed at 15?

*A.* There may be a few who may be dissatisfied but that doesn't matter much.

*Q.* What age would you recommend for boys?

*A.* I would put at least 18.

*Q.* Do you think that the Age of Consent should be increased in extra-marital cases?

A. I think it should be increased to 16 years.

Q. Now if there is a law of marriage at 15, you think from your knowledge of the girls in this part of the country that it may not be unsafe for a girl to become a mother after 15. Is that your experience?

A. Unless it be an exceptional case of weak physical constitution, I generally think that girls of 15 may bear the burden.

Q. Is frequency of pregnancy a very material cause in this part of the country for deterioration of health of mothers and children?

A. Yes, it is so to a considerable extent.

Q. Do you think that infant mortality has any connection with early maternity?

A. So the doctors say and I think their opinion is better in this respect.

Q. What is your experience?

A. I know of a very dear friend of mine. He married two of his daughters at a very early age. One was married at about 13 and the other at 12 and within 3 to 4 years in both the cases both the child and the mother died.

Q. Do you know of any definite cases amongst the Muhammadans or Hindus whose girls have been married definitely at a later age and how they fared?

A. I don't know.

Q. What is the usual age of puberty here amongst the Muhammadan girls?

A. It varies according to different constitutions, but I think it is between 14 and 16.

Q. Do Muhammadan girls attain puberty at 12 and 13?

A. Very rarely.

Q. Do you think that some period should elapse between puberty and consummation of marriage?

A. Yes.

Q. What period should elapse?

A. At least one year should elapse.

Q. Do you think that apart from physiological reasons there are other reasons which also make it expedient to further the Age of Consent?

A. The education of girls and boys may be another reason.

Q. But is there a tendency here amongst the Hindus and Muhammadans to educate their girls?

A. The tendency is growing.

Q. Would you consider Government justified in enacting a law in a matter like this where social habits are deeply implanted in the people?

A. I think the Government is justified and the country is now better prepared for it than perhaps it was a few years before.

Q. Do you know anything about the Mithil and the Bhumihaar Brahmins?

A. Child marriage is very common amongst these people.

Q. Do you think that these Mithil and Bhumihaar Brahmins would accept these new measures?

A. The advanced amongst them would accept these new measures.

Q. Does consummation take place amongst them soon after puberty?

A. In some cases consummation takes place soon after puberty and in some cases it takes place even earlier.

Q. Is it a custom amongst these people that their girls are sent soon after marriage?

A. In some cases it so happens that Gaona and marriage take place together and in some cases Gaona takes place after a short interval.

Q. Is there the dread of pre-puberty marriage amongst these people?

A. I think that is the impression amongst these people.

Q. Do you think that these people break the law which is now at 13?

A. They might do so but it is impossible to detect the cases.

Mr. Shah Nawaz: Will you please tell me how would the Mullahs of this province like the legislation?

A. If they take it as an interference with the religion in the sense that the permissive law which exists is prohibited then they may take exception to it but there is nothing in our Quoranic law which is against such a legislation.

Q. Is there any likelihood of their agitating that this legislation should not be made?

A. Some of the advanced amongst them will support this legislation. For instance the Amur-i-Shariat will support this legislation.

Q. Do you think that he will support this?

A. Yes.

Q. Has any Mullah expressed his opinion on this point?

A. Not in Bihar.

Q. Don't you think that there will be much agitation in case of such a legislation?

A. I don't think so.

Q. Are you quite sure that the Mussalmans will accept the legislation fixing the marriageable age at 15?

A. The tendency now is for an advancement and this legislation will be helpful to them.

Q. Supposing a person has two daughters one aged 12 and on account of economic reasons he may like to marry both his daughters at the same time. Would you care to make exemptions in such cases?

A. Personally I don't think that economic consideration ought to weigh in this matter.

Q. Supposing a man gets a suitable match and the boy refuses to wait till the prescribed age, in that case would you care to make an exemption?

A. Perhaps there may be some such concession on the condition that *rukhsati* ceremony should be performed after the prescribed age.

Q. Whom would you give the power of complaint if the law of marriage is violated?

A. I think in every case the Crown ought to be a party or at the instance of any private person in which the Crown is satisfied, it should take up the case.

Q. Do you think that an enquiry should be made or sanction should be given before the Crown takes up the case?

A. I think sanction should be given and the Crown should take up the case.

Q. Do you think it will be feasible if the complainant is required to deposit Rs. 200 or Rs. 300, before he makes a complaint?

A. The difficulty is that very few private individuals would undertake such trouble.

Q. Do you have *nikakhans* in this part of the country?

A. No.

Q. Is the marriage entered anywhere by the *nikakhans*?

A. No.

Mr. Mitra: Perhaps you know that the Muhammadans are against marriage law. They argue that now they are free to marry their girls at any age and this law will be against their freedom of action. Do you accept their arguments?

A. Although there is no prohibition in the Quoran to marry at any age but a reference is made in the Quoran about marriageable age and this reference is about inheritance age that is to say although permission is given it must have been considered desirable that there should be marriage at 15 or 16.

Q. And their argument is that the Prophet himself married Aisha at an age when she was 6 years old and consummation took place at 9. They say it is laid down in some Hadis?

A. I am not prepared to accept that Hadis.

Q. Some say that it is there for political reasons and it should be taken as an exception, therefore it should not be taken into consideration?

A. I think so.

Mr. Bhargava: You think that if any exemptions are allowed they should be on certain conditions and one of the conditions should be that the person getting exemption should arrange or should give a bond that he shall see that consummation does not take place before the prescribed age?

A. That is a matter of details and rules can be framed.

Q. You would not allow any religious grounds to be made the ground of exemption, for instance a man says that religion enjoins upon me that I should marry my girl before puberty. If you allow that everybody will claim exemption?

A. Yes, if that is done the law would be ineffectual.

Q. You have been pleased to say that if there is a marriage law the Crown should undertake all prosecutions. At present the offences relating to girls below 12 are cognisable and between 12 and 13 they are not cognisable. If you raise the age to 15 or 16 would you leave the law as it is or would you make it cognisable up to 15 or 16?

A. I would make it cognisable.

Q. So that police shall have the charge of prosecutions in all cases?

A. With certain safeguards. There might be a preliminary enquiry.

Q. First of all as soon as a marriage takes place who is the person who would bring it to the notice of the police or the authority concerned?

A. Any private person.

Q. If a man has got no enemies there are chances that he may go undetected?

A. I quite see the force of the question but the difficulty is that if you allow the initiative to the police there will be necessary harassment.

Q. In cases of breach of marriage law what is your object in making the cases non-cognisable?

A. They are in fact non-cognisable because a private person must move the Magistrate or the police must move the Magistrate and the preliminary enquiry will have to be gone through.

Q. So that you do not want police to interfere.

A. No. The Crown may take up the case after a preliminary enquiry because a private person would not go through the responsibility of a trial.

Q. There are certain offences which are contained in Sections 44 and 45, Indian Penal Code, in respect of which obligation is laid on certain village officials and other persons to report such cases to the proper authority if they come to know of the commission of such offences. Will you include these mental offences in that category?

A. I think that would be better.

Q. There is another way in which these offences are brought to light in Baroda where there is a law of marriage. There is a marriage registrar and every marriage has to be registered. As soon as a marriage is registered and the registering authority finds that there has been a breach of the marriage law, he sends an entry from the register to the court and that entry or that report by that officer is treated as a complaint.

A. That is one way of bringing such cases to light.

Q. Would you make the offences against the consent law compoundable?

A. No.

Q. Would you exempt boys, if at all, below the age of 16 from the purview of the law of consent. In the English Law boys under 14 are considered incapable of committing such an offence.

A. I think boys up to 14 should be exempted.

Q. What should be the punishment provided for breach of the marriage law for father or guardian? At present the proposal in Mr. Sarda's Bill is that punishment should be fine or imprisonment up to one month.

A. In the present state of the country I think heavy fine with a heavy maximum may be fixed with discretion to the Court in each case.

Q. It has been found by experience in Baroda that this fine is regarded as a marriage expense. Though heavy fine may be effective in the case of poor people it will be considered as an item in marriage expenses in the case of rich people. Don't you think there should be provision for imprisonment and the courts may exercise discretion in giving punishment?

A. As this is a first step towards this legislation there should be less responsibility and while introducing this first step we may advance cautiously. I think in the case of richer people even if you fix a very heavy maximum it will, to some extent, be deterrent.

Q. Do you think for this legislation second instalment will be necessary?

A. Time may come when we may have to revise this law.

Q. If you penalise marriage up to 15 you will have no occasion to revise it.

A. I should not think so.

Mr. Yakub: You say that in Chapter 4 of Quoran, some age for marriage is given. Will you quote it?

A. It is stated that the property of female orphans should not be delivered to them until they attain the age of marriage and this age of marriage is generally reckoned to be 15. There are different schools of thought. According to Abu Hanifa it is 18 but according to others it is reckoned at 15.

Q. Is that not in regard to delivering their property?

A. Yes, and that is also considered as the marriage age.

Q. You would deliver the property of the orphans to them when they reach the marriageable age. By that verse you find the marriage age.

A. Yes. It is 15 or 18.

Q. The Age of Consent law is not considered as an interference in religion. Do you think fixing the age for marriage would be an interference in religion? We have already got a law which puts the Age of Consent at 13. If interference in liberty of action is interference then is this Age of Consent law an interference?

A. Yes.

Q. Do you know when this law fixing the Age of Consent was enacted, if there was any opposition from the Muhammadans or from Maulvis on this score?

A. I do not think there was any opposition.

Q. Can you say why some of the Maulvis are opposed to a law fixing the age of marriage?

A. I cannot say, it may be their honest opinion.

Q. Is it not a fact that among the Mussalmans when nikah and rukhsati are performed at different times, the girl is never allowed to go to her husband's house after nikah and before rukhsati?

A. Not only she is not allowed to go there but among the Mussalmans they cannot see each other till the rukhsati ceremony is performed.

Chairman: Supposing there is *gami* in the family, even then the girl does not go to the husband's house?

A. No. She is considered for all practical purposes to be a stranger though she is legally married. On such occasions other relatives of the girl go there but the girl is not allowed to go.

*Mr. Yakub:* Supposing it is not possible to pass a law fixing the age of marriage then can you suggest any means by which the law of consent may be made effective?

A. I do not think I can really suggest any effective means. There may be suggestions for the sake of suggestions but I do not think they would be effective. As I said, personally I consider it undesirable to fix any Age of Consent without fixing an age for marriage for 2 reasons. It is not only because you cannot detect such offences but also because it is extremely undesirable. When once you permit them to marry they think they have a right of consummation of marriage and if it is penalised it would create unpleasantness between the husband and wife and this unpleasantness will last for their lives.

Q. If a law of marriage is fixed or Age of Consent is raised, do you think that instead of trying these offences in ordinary courts if separate matrimonial courts were constituted and these cases were tried by these courts they will create more confidence in the parties and there will be less bitterness among the people? These courts may be constituted of one judge and 2 non-officials as co-judges.

A. I would not have any objection but I think I have reasons to hold that there may not be sufficient cases to justify even a judge in a district to be kept engaged.

Q. But they would not be permanent courts; they will be constituted when there are 4 or 5 cases accumulated. These will be special tribunals. Will the work not be expedited?

A. I think so.

Q. Whom would you give the work of registering marriages?

A. At present there are kazis in this Province who have got power to register marriages but it is optional for the parties to register marriages or not.

Q. If it is made compulsory for the parties to get marriages registered, do you think that registration by the kazis would be quite sufficient?

A. Yes. Besides that you will have the ordinary evidence which is available at present.

Q. We want a common agency for Hindus and Muhammadans?

A. Then you will have to authorise the registrars and sub-registrars to register marriages.

Q. Will you not entrust this work to municipal boards and district boards as it is in the case of registration of births and deaths?

A. If you ask my opinion at least in this Province we have very sad experience of how they maintain their registers. I do not think that would be a very accurate maintenance of registers.

*Chairman:* What is your experience whether it is voluntary registration or statutory registration?

A. Kazis get some authority to register and they are authorised to charge some remuneration provided the parties chose to register the marriage. Registration is voluntary but keeping of the registers is statutory with the permission of the Government.

Q. But if you make it incumbent on the municipalities to see that every marriage is registered, will it not work?

A. Of course Kazi has not the means. As a rule kazis register only those marriages where he is invited to register. Very few marriages are registered even among the higher class of people.

*Mr. Yakub:* Kazis have also got their *naibs* who keep registers?

A. It is not enough for even one kazi to have sufficient work.

*Q.* If registration is made compulsory do you think that the authority should be given to registrars and sub-registrars and not to either local boards, district boards or kazis?

*A.* If the kazis are put under district boards or municipal boards, I think that would be a satisfactory arrangement. I would prefer kazis whether they be registrars or sub-registrars or whether they are officers specially appointed for the purpose.

*Q.* Would you give any fee to the registering officer?

*A.* The expenses will have to be met and small remuneration ought to be fixed. Even now a fee is charged in case of voluntary registration.

*Mr. Kadri:* Have you any experience of the system of registration of births and deaths in this part of the country in municipal as well as rural areas?

*A.* Yes. Here births and deaths are generally registered by officers in each thana in rural areas as well as in municipal areas. The chowkidar or the constable in whose beat that area falls reports at the police station. This register is usually preserved for 3 years and then it is destroyed.

*Q.* Is it not the health department of the municipality that maintains this register?

*A.* They collect figures from the thana, they have no independent agency of their own.

*Q.* Nor is it obligatory on the parents to report?

*A.* It is obligatory.

*Q.* Are there many violations to report?

*A.* I think there are.

*Q.* Do you think that registers are not accurately kept?

*A.* They are more or less accurately kept except with some omissions.

*Q.* Have you any suggestions to make this registration more reliable? Would you change the agency or would you suggest any other agency for maintaining these registers?

*A.* Maintenance of these registers is fairly accurate though not absolutely satisfactory and unless you are prepared to undergo heavy expenses it would not be desirable to change the agency.

*Q.* Would you say that the registers be permanently preserved or preserved for a large number of years?

*A.* Yes, I would say for 12 years.

*Q.* There should be obligation on the parents to report and any failure to report should be punished?

*A.* That is the rule at present also.

*Q.* But you think that law is not properly enforced.

*A.* Yes, and at times it is very difficult to enforce it.

*Mr. Bhurgava:* What is the act under which there is obligation on every person to make a report of birth and death? In the Punjab in municipal areas there is obligation but in rural areas there is no obligation.

*A.* I cannot quote the act but there is some legislation to this effect.

*Mr. Kadri:* What is the object of marriage according to Muhammedan Law?

*A.* The object is procreation of humanity otherwise the marriage with any other object is invalid.

*Q.* The spirit is that marriage must be brought about between two persons who are fully developed and capable of procreating healthy and strong children. Is it not?

*A.* It is quoted at the time of marriage that this should be the only consideration present in the mind of the parties.



**Mr. Kanhaiya Lal:** In Bihar and Orissa what is the usual age of marriage among Muhammadans?

**A.** It is about 14 or 15.

**Q.** Is it higher among the educated classes?

**A.** It is the same or a little higher.

**Q.** Among the lower classes is it not lower than 14 or 15?

**A.** Sometimes it is 7 or 8 though even amongst them it is generally 11 to 13.

**Q.** When marriage takes place earlier at 7 or 8 or 11 to 13 when does consummation take place?

**A.** That is a question which is almost impossible to answer.

**Q.** Is there any Gaona ceremony?

**A.** In some cases rukhsati ceremony takes place immediately after marriage even when the girl is 7 or 8 and in some cases it is after two or three years.

**Q.** Can you tell us whether in these cases consummation before puberty takes place?

**A.** I can only say that my belief is that it takes place in some cases.

**Q.** You recommend 15 as the age for marriage. Supposing the legislature is not willing to accept any law for marriage, would you like to have a law fixing the age of consummation at 15 or 16?

**A.** I would say that legislature is merely bringing in a fictitious legislation and unhappiness in certain cases for nothing.

**Q.** Supposing we have got a law fixing the age of marriage and a man breaks that law and pays the fine or penalty which may be imposed and unless there is consent law fixing the age of consummation may proceed. Would you in that case have a law fixing the age of consummation to support the marriage legislation?

**A.** If the legislature fixes any age of marriage and desires that consummation may not take place at an early age the proper thing for the legislature then would be not to check consummation but the meeting of the parties.

**Q.** Supposing there is a law fixing the age of marriage and legislature fixes the age at 14, what age would you fix, if any, for consummation?

**A.** I would fix it at 15 but I would not use the expression consummation but I would say meeting.

**Q.** You would like to have both laws—marriage law and consummation law to support each other.

**A.** Yes.

**Q.** Would you like to have same age for marriage and consummation?

**A.** Yes.

**Q.** You spoke of an enquiry by a Magistrate. Would you make these marital cases cognizable or non-cognizable?

**A.** I have submitted that the proper and desirable thing would be to leave the private party to move the Magistrate; I would make them non-cognizable but the Crown should take up the case.

**Q.** Is that after 12 or even before 12? Would you leave the law as it is at present?

**A.** Yes.

**Q.** Would you make it cognizable if it is laid down that enquiry in this matter should be made by a higher police officer such as Inspector of Police or Deputy Superintendent of Police?

**A.** This reminds me of the evidence of Inspector General of Police of this Province. He said about the police that 99 per cent. of constables are corrupt, 75 per cent. Sub-Inspectors and 50 per cent. Inspectors of Police

are corrupt. So up to Inspectors there is not much hope but when you go above that there is no suspicion.

*Q.* In that case if enquiry is to be made by Deputy Superintendent of Police, would you make it cognisable?

*A.* Yes.

*Q.* You said something about sanctions. I do not think you suggest that sanction of the Magistrate should be necessary before prosecution. You only suggest enquiry by a Magistrate before issuing process?

*A.* Yes.

*Q.* Sanction in this sense that after enquiry if he is satisfied he takes proceedings?

*A.* Yes.

*Q.* As regards registration of marriages, would it not be possible to have a common register of marriages and registration should be by a common agency giving the names of the marrying parties and their ages?

*A.* Yes.

*Q.* Would you advocate a system of registration of that character?

*A.* Yes.

*Q.* Who should be the agency in these cases?

*A.* Registrars or sub-registrars.

*Q.* What is the practice of registering marriages among the Christians and Parsis?

*A.* There are hardly any Parsis, and Christians generally marry in Churches. Hindus I do not think go in for registration except under the Civil Marriage Act.

*Q.* In the case of registration of marriages would you further recommend that a free marriage certificate should be issued by the registering authority so that the marrying parties may retain it as a record.

*A.* I think that would be desirable.

*Q.* In the case of births would you similarly require that a free birth certificate should be issued so that the parties may keep it?

*A.* Yes. That would be a very good record for the parties and authorities to know what the age of the child is.

*Q.* Would it also be a check in manipulation?

*A.* Yes.

*Q.* Another suggestion has been made that in order to support this marriage legislation we might have a rule saying that no boy should be allowed to appear in the High School or Matriculation Examination after a certain year if he is married before that year. For instance in the Allahabad University a rule was made in July 1928 saying that no boy will be admitted to the High School Examination from 1930 onwards if he is married after July 1928 and the effect of that rule is that mothers are now very careful and parents are very careful not to marry their boys.

*A.* That is one ingenious method of helping this legislation.

*Q.* Do you think such a scheme would work satisfactorily in Bihar and Orissa?

*A.* Yes, I think it would work as well here.

*Q.* Would it be acceptable to the people?

*A.* It is desirable but the only difficulty is that it would not apply to rural areas because there are very few people who send their boys up for Matriculation Examination.

*Dr. Beadon:* Can you tell us any cases which may have come to your notice of injury to girls as a result of early consummation or early pregnancy?

*A.* Yes. As a matter of fact I also know of a few non-marital cases. I have a clear recollection of 3 very brutal cases—at least allegations—as I

had to appear in all these cases and the accused persons were acquitted. One was by a Mahant of this place who committed such an offence on a girl of 6 years of age. I have got 2 other cases which I conducted. There were two brothers Martins, one was from Adra in this Province and another from Balagachia. In one case the girl was not so young and there was no serious injury but in the other the girl was almost killed. She was torn up. She had to remain in bed for six months before she was able to walk. In the Mahant's case the girl was in hospital for over a year.

*Q.* Did she survive?

*A.* Yes.

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**Memorandum handed over by the deputation of All-India Women's Conference on Educational Reforms while giving evidence at Patna on 8th January 1929.**

The All-India Women's Conference wishes to emphasise the fact that it has at each of its three conferences recorded its support of Sir Hari Singh Gour's Age of Consent Bill with the proviso that the age within marriage should be 16 and outside marriage 18.

It has also strongly supported the Bill to raise the age of marriage and recommends the ages of 16 and 21 for girls and boys, respectively.

It is of the decided opinion that it is ineffective to raise the Age of Consent without raising the age of marriage.

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**A deputation on behalf of All-India Women's Educational Reform waited on the Committee at 4-15 p.m. on the 8th January 1929. It consisted of the following :—**

1. Mrs. Kamaladevi Chattopadhyaya, Organizing Secretary.
2. Mrs. Sirirangamma, Mysore.
3. Mrs. Ishwari Nandan Prasad, Joint Secretary, Bihar.
4. Mrs. K. P. Jaiswal, Bihar.
5. Mrs. P. K. Sen, Bihar.
6. Mrs. S. K. P. Sinha, Bihar.
7. Mrs. D. L. Nandoolyer, Bihar.

*Chairman:* I understand that you come as a deputation from the ladies conference lately held here.

*A.* Yes. Our opinion on the subject now being considered by the Committee is :—

"The All-India Women's Conference wishes to emphasise the fact that it has at each of its three conferences recorded its support to Sir Hari Singh Gour's Age of Consent Bill with the proviso that the age within marriage should be 16 and outside marriage 18. It has also strongly supported the Bill to raise the age of marriage and recommends the ages of 16 and 21 for girls and boys, respectively. It is of the decided opinion that it is ineffective to raise the Age of Consent without fixing the age of marriage."

*Q.* Why do you make this distinction of 16 and 18 between inside marriage and outside marriage? If it is on physiological grounds then they require the same age?

*A.* It is on grounds of practicability that the distinction is made because once the girls are married it is difficult to keep them away; so we fix 16

as the minimum within marriage. For those who are not married it is easy but for the married their husbands demand them.

*Q.* If a girl can give her consent within marriage why she should not be capable of giving consent outside marriage? Is a girl capable of giving intelligent consent whether inside or outside marriage at 16?

*A.* We do not think so but we have put this provisionally for the present because we feel that if we demand 18 we may not get it at all. It is not a matter of principle but it is only as practical politics.

*Q.* Would you like to have 18 within marriage?

*A.* Yes.

*Q.* Supposing it is impossible would you like to have it at 16?

*A.* Yes.

*Q.* Do you not make any distinction on the ground that outside marriage it carries with it a great deal of mental obliquity and inside marriage it does not?

*A.* No.

*Q.* Now in recommending this age of 16 for girls and 21 for boys within marriage can you give us any idea of the feelings of orthodox ladies amongst whom you have had chances of moving? Are you in a position to tell us what they feel?

*A.* They would like to have their girls married later but on account of social ostracism they are compelled to marry earlier and if legislation gives them freedom they would marry their girls later. That is the opinion of orthodox ladies.

*Q.* Would you say that of Mysore and Madras?

*A.* (Mrs. Sirirangamma) Yes. In fact I come from an orthodox family and previously I had to marry girls early but now I have married a girl at 16.

*Mrs. Sen;* In Bihar I had a talk with many orthodox ladies; they also said the same thing that because of social custom they do not marry their girls late. If there were legislation they would marry them after 16.

*Mrs. Beadon;* We have been told by certain witnesses that orthodox girls must be married early because there is fear of immorality if they are not married early.

*A.* That is an apprehension; it is not correct. In fact in the houses in which there are widows, they are cared for.

*Chairman;* Do you think that the hands of those ladies who feel about this social ostracism would be strengthened and the hands of their males in the house will be strengthened by this legislation?

*A.* (Mrs. Chattopadhyaya) Certainly.

*Q.* In the society that you have moved in, what per cent. do you think there are of such ladies who feel the social ostracism and would like to have a law to strengthen their hands? Do you think it is a large per cent.—say more than 80 per cent.?

*A.* (Mrs. Sirirangamma) Now they do not marry till 14 or 15.

*Q.* Are there cases of concealed puberty?

*A.* Yes, there are a good deal of such cases.

*Q.* We have heard complaints that young men would not like to marry when they are young but they are absolutely compelled on account of fear on the part of parents of ostracism and if there were a law that would help their parents they would be relieved of the obligation.

*A.* Not only that but young men do not get suitable wives because the difference in age would be very great. If this law does not come into force, the parents think that they cannot marry a girl at 17 or 18; so they have to marry them early.

**Q.** In connection with penalising of marriages below 16 for girls and below 21 for boys, would the ladies like a punishment of fine only or of imprisonment also? Was this question ever discussed at all?

**A.** No, it was not discussed.

**Q.** If you prescribe imprisonment, in India nobody is going to complain against his son-in-law and even if he is sent to jail he may discard his wife and the wife, for whose benefit it is intended, may herself suffer. That is why it was suggested that punishment should be much less. There has been no discussion in any of the conferences?

**A.** No.

(Mrs. Sen) If there is fine only wealthy people would not mind it at all.

**Q.** Rs. 1,000 or Rs. 500 fine would be quite sufficient for wealthy people.

**A.** Apart from that it is very hard on the boys; in most cases they are hardly responsible for the marriage.

**Q.** Have any cases occurred in Bihar in which men of 40 or 45 married girls of 13?

**A.** Yes, there are many such cases.

**Q.** If there were a choice between the Age of Consent law and age of marriage law, do you think the Age of Consent law would be more tolerated by the orthodox people?

**A.** (Mrs. Sirirangamma) The Age of Consent law would be more acceptable to the orthodox people because they believe in pre-puberty marriages.

**Q.** In Bihar do you think Bhumiwar Brahmans or other orthodox people would rather like the law of consent with the marriage law or they would rather like a law of marriage at a lower age?

**A.** (Mrs. Ishwari Nandan Prasad) I think they would like to have law of consent.

**Q.** Would people like law of consent or law of marriage or both?

**A.** They would like to have both, if not both at least one, and they would prefer law of consent.

**Q.** If the law of consent were raised to 16, would you recommend it without the marriage law? I want you to realise the fact that if the Age of Consent is raised from 13 not only to 14 but beyond 15 there are many more chances of the offences being disclosed because there will be many more cases of maternity but girl mothers at 13 are rare and if the age is 16 there are still more chances of so many more cases coming to light. In view of that fact, would you like that if the marriage law cannot be passed for one reason or another, the consent law should be passed, the age being raised as high as 16. Would you content yourself with consent law as a sort of consolation without fixing the marriage law?

**A.** (Mrs. Chattopadhyaya) We have discussed it but somehow the ladies feel that they would rather concentrate on getting the marriage age fixed than be satisfied with the Age of Consent law.

**Q.** Are you in a position to suggest any method by which these cases could come to court more than they have been at present?

**A.** The social reform organisations or our own conferences can do this work. The conferences in the various provinces and districts would take this up as a special piece of work and keep more watch and find out if the law is broken. They would bring such cases to light.

**Q.** After all you realise that in a vast country like this the women associations can at the best be few in each province.

**A.** That is a drop in the ocean.

**Q.** Has nothing suggested to you nor are you in a position to suggest anything as to how it can be made more effective?

**A.** The conference has not given much attention to this because they thought it would be proper to work up for the marriage law which is a more

direct way of checking the evil. In fact we have never gone into this question.

*Q.* It is only here that I have learned of the possibility of marriage law not coming into force at all and so if you cannot get the first best, would you like to have the second best. Therefore we are thinking more and more of the Age of Consent than the marriage law?

*A.* As a matter of principle it might be of some value to make the people take a more favourable attitude towards this question but in actual practice it will not be very helpful.

*Dr. Beadon:* Can any of the ladies say that sterility resulted in any case on account of early consummation?

*A. (Mrs. Sirirangamma)* In many cases.

*Q.* Would you mind telling us whether you have come across any cases in which the girl suffered or the child suffered on account of early maternity?

*A.* Child mothers cannot take care of their health, they get consumption and die at an early age.

*Q.* Do they get consumption as a result of first pregnancy or at the 3rd or 4th?

*A.* That happens at 2nd or 3rd pregnancy.

*(Mrs. Sen)* In my family a girl at 13 gave birth to a child. It was very very difficult labour and she suffered for two or three months. She is very weak now.

*Q.* When did that happen?

*A.* 5 months' ago.

*Q.* Did the child survive?

*A.* The baby died. The girl was small and the child was unusually big.

*Q.* Do you know any cases in which the girl was fairly well developed before she gave birth to a child and yet suffered?

*A.* There are several cases.

*Q.* Even among women of 20 you will find bad cases but I want to know whether there are more cases of young girls suffering.

*A. (Mrs. Sirirangamma)* Yes.

*Q.* In your own experience during the last 5 years how many cases do you know of girls who had difficult time during the first child birth?

*A.* I know about half a dozen cases.

*Q.* Can you give us any other cases?

*A. (Mrs. Jaiswal)* I know of many examples; the other day I came across such a case. If you go to the hospital you come across so many cases.

*Q.* But very few come to the hospital?

*A.* If they do not come to the hospital, they call the doctors at home, and you can find out from the doctors.

*Mr. Shah Nawaz:* What is the total number of members of your conference?

*A. (Mrs. Chattopadhyaya)* We have not got a membership. It is the delegates from different parts that assemble and form a conference.

*Q.* Have you got branches all over India?

*A.* Yes.

*Q.* How many branches have you got?

*A.* We have divided the country into various constituencies on linguistic basis and we have got 33 such constituencies.

*Q.* Is it representative of all castes?

*A.* Yes.

*Q.* Have you got Brahman ladies as members who take part in it?

*A.* Yes.

**Q.** What is the total number of Brahman ladies?

**A.** We have not gone into the question of communities, we only see how many delegates come from each constituency.

**Q.** Do ladies feel very strongly on this question of early marriage?

**A.** Yes.

**Q.** Please tell us whether the village women feel the same?

**A.** I think more or less everybody feels very strongly.

**Q.** If this legislation is not passed, do you think your feelings will grow more bitter against men?

**A.** Yes.

**Q.** Do you think that you have not been treated well in this respect by men?

**A.** We do not look at it that way. We are victims of very bad social customs and men may be victims as ourselves. In fact if you see the protest meetings that were held against these Bills, you will have noticed they are mostly from men.

**Q.** If this legislation is passed, will it benefit men or women?

**A.** It will benefit both. We are clamouring as to the action that we should take if the age of marriage is not fixed.

**Q.** What is your opinion regarding this injunction in the Shastras about which the Brahmans feel so strongly?

**A.** (Mrs. Srirangamma) It is only those Brahmans who have no knowledge of the duty.

(Mrs. Chattopadhyaya) Brahmanical injunctions are not followed by Brahmans when they relate to other questions.

**Q.** Supposing we were to fix the marriage age at 16, would in your opinion most girls keep straight?

**A.** Yes.

**Q.** We have been told by men that girls may go wrong if they are not married early. What do you say to that?

**A.** (Mrs. Sirirangamma) They have got as many widows as unmarried girls at home, how do they take care of them?

**Q.** Do you think this early consummation is one of the main causes of infant mortality?

**A.** Yes.

**Q.** Do you think that some of the girls die on account of this reason?

**A.** Yes.

**Q.** What is generally the age in India when girls are married among the Brahmans?

**A.** 12.

**Q.** But those who have pre-puberty marriages, when do they marry their girls?

**A.** They do not marry before 10.

**Q.** Have you reason to believe that some marriages are consummated soon after puberty?

**A.** Yes, within a week. It may be a week, it may be 15 days or 6 months. They only wait for the girl to get puberty.

**Q.** Do you think that marriages should not be made invalid but penalised?

**A.** Yes, because there would be great opposition if they are made invalid.

**Q.** Who is to make complaints if the marriage law is broken? Will ladies take upon themselves to report?

**A.** (Mrs. Chattopadhyaya) Yes, and also men who are in favour of social reform.

*Q.* Do you think that relatives of the boy and the girl will report?

*A.* They may in certain cases but those people who are outside the family will report.

*Q.* Do you think that the status of women will be lifted generally in the matter of law of marriage and inheritance?

*A.* Yes.

*Mr. Mitra:* You are certainly aware that there is a class amongst the orthodox people who believe that the girls must be married before puberty.

*A. (Mrs. Sirirangaamma)* Yes.

*Q.* We were told by witnesses in the Madras Presidency that Brahmans marry early but yet consummation never takes place before a girl attains puberty.

*A.* That is true.

*Q.* Would not you prefer that by some method it may be so settled that girls may be married before they attain puberty but consummation should take place later on so that religious notions may not be infringed?

*A.* The best thing is not to have marriage.

*Q.* If it is possible to have some marriage law, then should there be any exemptions in particularly hard cases? Suppose a man feels that he is not likely to survive till his daughter will attain the prescribed age and there are no relations or guardians to look after the girl after his death and therefore he wants to marry his girl, would you exempt him?

*A. (Kamala Devi)* But death is an accident which may occur at any time.

*Q.* But the man is suffering from phthisis and he is sure that he will die?

*A. (Mrs. Chattopadhyaya)* But the girl may be six months old at that time. We do not believe in any exemptions.

*Q.* But in that case he will have to apply for marriage license and orthodox people believe that it is really going against their religion.

*A.* But it is for such people that we will have recourse to law; it is not for other people who believe in marrying late.

*Q.* Are you for keeping the guardianship of the girl with the parents up to a certain age because the parents then can object to her going to her husband. Do you want some such legislation by which guardianship may remain with the parents till the girl attains a prescribed age?

*A.* Yes.

*Q.* As regards complaints for breach of marriage law, do you think that there should be registration of marriages?

*A.* That would certainly be useful.

*Mr. Bhargava:* Has your conference done anything to popularise the evil effects of early marriage except educating the legislature?

*A.* Yes.

*Q.* What is the provision that you have made for the coming year to popularise the evil effects of early marriage except talking in meetings?

*A.* When you have to go to women you cannot do it by reading and writing, you have only to do it through talking.

*Q.* I want to know whether you have done any work in the villages?

*A.* Yes, it is done at the district headquarters.

*Q.* Can you give us a copy of the report of the work that has been done with regard to this particular thing?

*A.* I will send you a copy of the report.

*Q.* Does it mention any particular work that has been done?

*A.* We cannot do anything else but hold meetings and talk to these women. That is all the work we could do at present.

*Q.* Can you say in general terms whether it has produced any effect?



A. It has produced. It has formed public opinion otherwise most people would not have known that it is possible to have a marriage law.

Q. How many branches have you got?

A. We have got 33 constituencies.

Q. Do you know the total number of members in the whole country?

A. We have no membership. Each constituency has got several districts in it and we leave it to each constituency to follow its own course and its own methods as it thinks best suited for its work.

Q. Is it a fact that girls in different provinces attain puberty at different ages?

A. (Mrs. Sirirangamma) Yes. It ranges from 11 to 16.

Q. Would you like to have the same age for marriage and consummation in all the different provinces of India or would you like to have different ages?

A. (Mrs. Chattopadhyaya) The same all over.

Q. It may happen that in the Punjab a girl may have to wait for one year after attaining puberty and in Madras she may have to wait for 5 years?

A. But we would have the same age.

Q. What is the punishment that you would give to the mother who may celebrate the marriage of her daughter or son before the prescribed age?

A. Mothers do not do it.

Q. If it is proved that the father did not like to do it but pressure was put upon him by the mother, would you punish the mother?

A. Such cases will be very rare.

Q. What punishment would you give?

A. The same punishment.

Q. In the Baroda State where there is marriage law, mere fine has proved a failure and fine is regarded as a part of marriage expenses. Would you have the alternative punishment of imprisonment for one month?

A. Yes. This punishment should be given to the father or male guardian.

Q. Would you like to have merely fine or imprisonment or both?

A. Both.

Q. Though in many cases the court may award fine only would not imprisonment serve as a deterrent to many persons?

A. Certainly.

Q. I may tell you that an amendment has been made in Sarda's Bill that in the case of mothers only fines awardable while in the case of fathers imprisonment can be awarded.

A. Yes.

Q. Now you know that it has been represented by many witnesses that there will be great amount of agitation in the country if this marriage law is passed. I want to know your definite opinion whether this agitation or discontent is one which the Government should ignore or it is one which the Government should consider?

A. If Government can ignore so many other kinds of discontents, why should it not ignore this.

Q. If Government does not legislate in this matter, do you think it will be guilty of criminal neglect because it is a matter of national importance?

A. Yes.

Q. Will that restrain women from agitation?

A. How can that restrain?

Q. As regards this breach of consent law at present the punishment is 2 years if the girl is between 12 and 13, would you like that this punishment may be retained?

A. (Mrs. Sirirangamma) Yes.

Q. In reply to a question from the Chairman you said that you would exclude boys of tender years from its purview. It is not always that the accused is a boy of tender years but it may happen that the man is of 40 years or more. It may be left to the discretion of the magistrate so that in proper cases suitable punishment may be awarded?

A. It should be kept as it is.

Q. If the age is raised to 16, would you keep the same punishment?

A. Yes.

Mr. Yakub: Is it not a fact that the ladies of the house are consulted in settling the marriage of their children?

A. (Mrs. Chattopadhyaya) Sometimes.

Q. Can you give me any instance in which a marriage was performed in any family without consulting the ladies of the house?

A. There may be such examples.

Q. In most cases ladies of the house are consulted in settling the marriage?

A. Ladies usually give in to men.

Q. Is it not a fact—it may not be in modern educated girls—that ladies are anxious to see that their children are married early?

A. (Mrs. Sirirangamma) Yes, grandmothers.

Q. Is it not a fact that often times their wishes prevail upon their husbands and sons?

A. Yes, sometimes.

Q. How long is it that the evil of early marriage has been realised by the women?

A. For the last 20 years.

Q. They are trying to remove this evil as soon as possible?

A. Yes.

Q. Even in Madras?

A. Yes.

Q. What has been the effect of this restraining influence of women upon the marriage of girls in Madras?

A. As I said sometime ago the age of marriage of girls was 8 or 9 years but now it is 13 or 14 years.

Q. Is that so in Bengal also?

A. (Mrs. Sen) Yes, the age in Bengal is increasing.

Q. The opinion which is being expressed by you now is supposed to be the opinion of the conference and not your individual opinion?

A. (Mrs. Chattopadhyaya) Yes.

Q. Is there a fair number of Mussalman ladies in your conference?

A. Yes.

Q. Have you also consulted them on this question?

A. They take part in the conference and they said that they had no early marriages.

Q. We are told by several witnesses that in Bengal it is the same with Hindus and Muhamnadaus and in other provinces too in villages there is not much difference of the age of marriage between Hindus and Mussalmans.

A. Muhammadan ladies have given full support to the Marriage Bill. Last year when the Begum of Bhopal presided over the conference she devoted quite a good portion of her address to the evil effects of child marriages.

Q. You have said in your statement that you would prefer the age of marriage being fixed. May I know to whom would you give the right of complaint in case of infringement of this law?

A. To such organisations as work for social reform.

Q. Would you give the right to the general public?

A. Yes.

Q. If you give the right to the general public there is a fear of malicious prosecutions being launched by enemies and mischievous persons. If a marriage is performed to-day a mischievous man simply to harass the parties puts in a complaint that the girl who was married is below age.

A. If you have the registration of marriages it would solve the problem much more easily. If you have marriage law there would not be much cause for malicious prosecutions because you will have sufficient evidence.

Q. If you give power to anybody then any man can go and make a complaint and will thus put the parties to any amount of trouble.

A. I think it would be better to leave it to organisations.

Q. Would you not give the power to the police or any individuals?

A. No.

Q. You now revise your opinion and suggest giving the power to the organisations formed for this purpose?

A. Yes.

Q. In spite of there being opposition on behalf of religious leaders both among the Hindus and Muhammadans by Maulvis and Pandits that such a legislation is an interference in their religion, would you still persist in having legislation of this sort?

A. Yes, we do.

Q. You want to discard your religion in this matter?

A. We do not discard religion, we do not think it is religion at all.

Q. Do you think you know more about religion than the learned pandits?

A. It is not a question of knowing. We find that the custom of child marriage did not exist in ancient days when Hindu religion prevailed. If those people could practise late marriages and remain in the Hindu religion why we should not be able to do it without being termed irreligious or accused of having discarded the religion.

Mr. Kadri: Some witnesses have told us that people are raising the age of marriage themselves by social reform work then why not leave it to social reform associations instead of enacting a law. What is your opinion?

A. (Mrs. Sirirangamma) Social reform associations would not be able to bring any sort of pressure on the people.

Q. But people are raising the age themselves?

A. (Mrs. Chattopadhyaya) The law would strengthen the hands of the people.

Q. You think that law would be necessary in this case?

A. Yes.

Mr. Kanhaiya Lal: Suppose the legislature only passed a law of 14 as the age of marriage, what age would you fix for consummation?

A. We have passed 16.

Q. Would you recommend that in order to support the marriage law a rule should be made by the Education Department that no boy should be admitted to the high school or Matriculation examination if he is married after a certain period that is to say suppose we give 2 years notice that after 2 years no boy will be admitted to high school or Matriculation examination if he is married after a certain period?

A. I think that would considerably help us.

Q. Will people welcome it?

A. We will welcome it. It should be made applicable both to girls and boys.

Q. We are not going to stop girl's education because it is not spreading easily.

A. (Mrs. Sirirangamma) In practice in Madras and Southern India boys are not married very early. On the other hand they do not want to marry at all and that is a trouble to the parents of the girls, therefore they got their girls married early. Therefore it applies not so much to the boys as to the girls.

Q. Most people will then say we do not care for the education of the girls and if they are not allowed to go in for examination, we do not care?

A. The girls could study at home. Such rule will be a great hardship on the mothers of girls if boys alone are not admitted to the college.

Q. If you exclude married girls, they will not be sent to school and the parents would not care for the education of girls. In the case of boys if a boy is married after a certain time, he would not be admitted and so parents will take special care not to marry boys early?

A. Yes.

## Written Statements of persons not orally examined.

### Written Statement, dated the 8th August 1928, of Maulvi SAIYID ABDUS SAMAD, Sub-Divisional Officer, Jamul.

1. No.

2. I am in favour of retaining the law of the Age of Consent as it stands and this because it is no use in the present state of society to make an advance on it. The law will remain a dead letter whether the Age of Consent is 13 or 14.

3. The crimes of seduction and rape are rare in this part of the country.

The amendment of the law made in 1925 raising the Age of Consent has not had any effect in preventing or reducing cases of rape or seduction of girls.

In my opinion no legislative measures would make the law effective.

4. No, not at all.

No legislative measures would make the amendment of 1925 effective.

5. Among the lower classes who are illnourished and ill-clothed and live in dirty and unclean houses and surroundings 15 to 16 years. Among the upper classes 13 to 14.

It does not depend upon caste, community or class of society. It depends upon diet and the mode of living.

6. (1) No.

(2) Yes.

(3) No.

No case ever comes to the court.

7. I have consulted a Pandit and he says the Hindu religious books enjoin that a girl must be married before 12, or at all events, before she attains puberty and that if her parents neglect to do so they will be consigned to hell. Consummation of marriage according to him is not compulsory before puberty but at puberty it is. Further that the attainment of puberty is a sufficient indication, of physical maturity to justify consummation of marriage. In support of his views he has cited some texts from Hindu religious books which I annex to this report.

8. "Gaona" is usually performed. "Garbhadan" is seldom performed, as it seldom happens that the husband and the wife are together immediately after the first menstruation. "Gaona" is generally anterior to the consummation of marriage. It is generally performed after the attainment of puberty or as soon after as the financial condition of the girl's parents permits, mostly within a year.

9. No.

At 16, whether puberty takes place before or at 16.

10. 16.

11. Yes.

A girl was married at about 12 and shortly after the marriage was consummated. She attained puberty about 2 years after consummation of marriage. This premature consummation of marriage caused permanent injury to her uterus and general health. She is now over 20 but suffers from several complaints peculiar to women. She conceived several times but each time had abortion.

12. Yes. It is only natural.

13. No. Even people who may be called educated are entirely indifferent.

14. Not before puberty but they favour it immediately after puberty.

15. No. I have had no experience of any such case though I am sure difficulties will be experienced.

I would suggest the compulsory registration of all births, so that her correct age may be known if there is a case of rape in respect of her.

16. No, not even if it is raised to above 14. Whatever the Age of Consent the difficulty of determining the correct age will in many cases remain present.

17. Yes.

I would have the law stand as it is.

18. I would.

At present the procedure is rather complex and Dr. Gour's bill will make it more complex. I would divide the offence of rape into two broad classes :—

(1) Sexual intercourse by a man with his own wife, the wife being not under 14 years of age—Non-cognizable, summons, not compoundable, imprisonment of either description for 5 years and fine—Court of Session or District Magistrate.

(2) Other cases—same procedure and punishment as is now in force.

19. I can suggest none.

No husband is likely to be proceeded against for rape upon his own wife. Improper prosecution or extortion is possible only in cases outside the marital state and the only safeguards at present are section 211, Indian Penal Code and Section 250, Criminal Procedure Code.

20. In my opinion legislation fixing the minimum age of marriage will be more effective than fixing a higher Age of Consent, though this measure is sure to be resented by the public who will regard it as an undue interference with their liberty of action and the prevailing custom.

But even this measure will hardly be effective. If the minimum age is fixed say at 14 and the parents of a girl who is only 13 or 13½ want to marry her they can give out that the girl has completed 14 and there will be nothing to show that their statement is false. That is why I advocate legislation making it compulsory for all births to be registered.

21. I am firmly and strongly of opinion that the legislature can never secure the object in view. The amendment of 1925 has raised the Age of Consent in the case of marital state to 13. Marriages in the case of girls below 13 are undoubtedly being consummated and yet how many cases have been taken to the courts during these three years?

The only remedy for this evil is the progress of social reform by means of education and social propaganda and it will take at least a quarter of a century even for these means to reduce the evil to any appreciable extent.

**Written Statement, dated the 10th August 1928, of Mr. GONESH PRASAD SAHU, Banker and Zamindar, Champaran, and Municipal Commissioner, Motihari, B. N.-W. Railway.**

1. In this part of the country girls generally attain puberty between 13 and 14 years of age. After puberty at least one year's abstinence from cohabitation is quite desirable. Because you will find cases in general where girls bringing forth children at the age of 13 or 14, often get more weak progeny than those giving birth to children at the age of 15 or 16. No

doubt this depends on social reform and moral education, but in order to make it more effective, it needs being backed by penal law. In this connection I think Sarda bill is preferable to your existing law at the same time more effective, because Sarda bill checks the social evil at the very root whereas the existing law provides penalty after the evil is done.

2. India is inhabited by thousands of unhappy widows who are to lead under hard social customs, a life of prisoner throughout the rest of their lives. You will be surprised to learn that widows from one month to 5 years of age too are to be found in thousands. The calamity does not end here. Their later disastrous life becomes a source of ruin to thousand other innocent souls. I think Sarda bill solves this heart-rendering problem by penalizing child-marriages whereas the existing law fails. This is certainly not religious but social evil and should be put to stop.

**Written Statement, dated the 10th August 1928, of BHAIYA RAJ  
KISHORE DEO, Riyasut Nagarutari, Palamau.**

1. My part is satisfied with what the present law is to the effect.
2. (1) In my part girls aged 14 years mostly attain puberty and have their development such as could be desired.  
(2) Nil.
3. No complaint of rape cases in my part. Yes, the amendment of the law in 1925, raising the Age of Consent to 14 years proves successful in all the cases.
4. Yes, this also successful.
5. Girls in my part usually attain puberty at the age of 12 to 14 years. The age 12 years relates to most cases among rich classes while 14 amongst the low classes.
6. (1) No.  
(2) Rare cases.  
(3) No.  
Rare cases.
7. Religion is not so very particularly to these cases.
8. Yes, " Gaona " ceremony is usually performed in my part. Sometimes it coincides with and sometimes it is anterior to the consummation of marriages. It is performed generally after the attainment of puberty and that about within a year or two.
9. Yes, the attainment of puberty is sufficient indication of physical development fit for marriage.
10. 14 to 15.
11. Yes, we are unable to supply the details.
12. Yes.
13. No. I beg to refer to the answer given in paragraph 1.
14. Early marriage of the children is mostly favoured by the low classes but not so by the high classes.
15. No difficulty.
16. 14 or a little above would involve little difficulty in this case.
17. They may be separated into different offences. For extra-marital offences maximum 6 years rigorous imprisonment and for within marital six months rigorous imprisonment.
18. Summons in marital offences.  
Warrant in extra-marital offences.
19. No.

20. Legislation fixing a higher Age of Consent is likely to be more effective.

21. My part does prefer and ready on the strengthening of the penal law by means of education and social propaganda.

**Written Statement, dated the 10th August 1928, of Mrs. S. RAO, Cuttaok.**

1. Not known to me.

2. (1) No circumstances justify retaining the law of the Age of Consent as it is.

(2) A girl who is not at least sixteen years of age cannot give consent of her own free will; she must either have been seduced or threatened into consent. So making an advance on the present law the girls are partly protected for a longer period than they are at present.

3—4. Not known to me.

5. The usual age at which girls attain puberty here is from 12 to 15 years.

6. Amongst certain classes, such as the Mahanty or the Khandait, the girls are generally married at the age of 18 or 20 or even older. But amongst the Brahmins and the low caste people, where child marriage prevails, the girl is sent to her husband soon after puberty, whatever the age.

I do not know if any of these cases come to court.

7. I attribute the practice of early consummation of marriage to custom. It seems in the "Manu Samhita" there are injunction about child marriage. But people generally follow the custom. If anybody does not follow it he is outcasted by the community.

8. As soon as a married girl attains puberty, an astrologer is consulted. He fixes the time when the "Purna Bibaha" is to be performed it may be within a few weeks or months or even a year. The word "Purna Bibaha" means the consummation of marriage.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. A girl's physical development may be considered mature enough to justify such consummation, without injury to her own health and that of her progeny at least four or five years after puberty. Medical science also confirms this.

10. The question is difficult to answer. A girl who is naturally brought up, is not competent to give an intelligent consent to cohabitation, with a due realization of consequences, before the age of 18. But in those unfortunate classes of communities where child marriage prevails, the little girls are often prepared for their untimely womanhood by well meaning elders, so that their minds are aged before their time, by informations and ideas, the meaning of which they cannot properly grasp.

11. I have not actually come across any such cases, though I have heard of some.

12. Early consummation and early maternity are partly responsible for high maternal and infantile mortality, want of knowledge of hygiene and sanitation and ignorance of the *dais* being other causes.

13. Not known to me.

14. The enthusiasm shown by the ladies in supporting Mr. Sarda's Bill, in the recent education conference of women held here shows that they do not favour early consummation of marriage.

15. I do not know.

16. I cannot say.

17. Yes. I would separate extra-marital and marital offences into different offences. The marital offences the offender should, in my opinion, pay a heavy fine (according to his income). If imprisonment is thought necessary



it should be for a short time only, not more than one year. For a marital offence a long imprisonment is not desirable, as it leaves the family unprotected. For extra-marital offences, the offender should undergo imprisonment for 10 years or more. I cannot say anything about the procedure.

18. I cannot.

20. Fixing the minimum age of marriage is likely to be more effective for the well-to-do or middle classes. Penal legislation fixing a higher Age of Consent for marital cases will probably be more popular with the poorer classes, specially the working people. In the poor families the girls do not go to schools, neither have they very much to do at home, as their home life is simple. Where both the parents go out to earn their living the girls are sometimes left at home without anybody to look after them. If they are kept unmarried till the age of 16 or 18 they may fall into mischief. But if they are married a little earlier, the very fact of being married will keep a check on their thoughts and actions and save them from many dangers. I suggest this arrangement only for so long as we are unable to establish free schools and give them education.

21. The progress of social reform by means of education and social propaganda is very slow and uncertain, specially in an orthodox country like India. But the necessity is immediate. So I would rely on the strengthening of the penal law to secure the object in view. Education and social propaganda will be carried on at the same time, to make the people realise the necessity of the law, and willingly abide by it.

**Written Statement, dated the 11th August 1928, of Rai Bahadur  
A. N. CHATTERJEE, District Judge, Gaya.**

1. I have heard of none.

2. The circumstances which in my opinion justify making an advance on the present law of the Age of Consent are that Indian girls do not attain full maturity before they are 15 and cohabitation before that age generally leads to their break down in health on account of childbirth and also to infantile mortality.

3. No. No. The Age of Consent should be raised.

4. A little effective by stimulating public opinion and putting off marriage beyond 13.

5. Between 12 and 14. No, except in cases of sickly or famished girls.

6. Common. Soon after puberty. Such cases do not generally come to Court.

7. No. Due to carnal desire.

8. Yes. It coincides generally with the consummation of marriage and soon after the attainment of puberty.

9. Not always. 15 years.

10. A girl in India is unwilling to disobey her husband. 15 years.

11. I have not noticed any such case.

12. Yes.

13—14. No.

15. Yes, naturally. Registration of birth.

16. To a certain extent it would be.

17. As at present.

18. No.

19. I have no suggestion to make.

20. The 2nd alternative.

21. On both. But the penal law will not secure the object in view so much as the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 10th August 1928, of KRISHNA KUMARI SINHA, wife of Thakur Bhola Nath Sinha, Vice-Chairman, District Board, Palamau.**

With reference to your office letter resting with No. 42-A.C.C., I have the honour to submit that the replies of questionnaire framed by the committee with reasons have been sent to you by my husband in consultation with me. I endorse the views expressed in his letter dated the 8th of August 1928, and I have nothing more to add.

**Written Statement, dated the 10th August 1928, of Mr. BHOLA NATH SINHA, Vice-Chairman, District Board, Palamau.**

The questions of amendment of age limit of consent with regard to Sections 375 and 376, Indian Penal Code, and the Sarda Bill penalising child marriage are so mixed up that opinion expressed with reference to one can be used for the other. However, I am concerned at present with the amendment for Sections 375 and 376 and I confine my opinion within the purview of those sections.

Before one can expect that the age limit of consent under Sections 375 and 376, Indian Penal Code, has worked satisfactorily and has the effect of minimising the occurrence of offences of seduction and rape, the age limit of child marriage has been fixed and the law has been administered with due rigidity and severity.

The main object of the amendment under review is to see that the girls are not forced to cohabitation before their organs are fully developed and nature allows cohabitation with regard to their health and the health of future generation.

As far as India is concerned the experience shows that the generations are deteriorating day by day and various diseases of very bad types and of serious nature are developing in India in every nook and corner with vital results. The serious type of Phthisis and other diseases of like nature are now common everywhere which was never known before. This is all due to child marriages and their adopting sexual intercourse before ripe age.

Now-a-days due to poverty the girls as a rule, do not get puberty before attaining the age of twelve. The common age in this part to attain puberty is between 12 and 14. In rare cases girls attain puberty before 12 and after 14. Even after attaining puberty there should some time elapse for nerves to mature before girls should be allowed to have sexual intercourse. My idea is that girls in this part do not attain the age of discretion to know the wrongs which may be done to their health and to the health of progeny by early cohabitation before they attain the age of 15. The law embodied in the Indian Penal Code, Sections 375 and 376 will not have effective results as far as offences between husbands and wives are concerned till the child marriages are prohibited. When the child marriages are prohibited and the ages of girls and boys are fixed as 14 and 18 respectively for marriages and offences thereunder are penalised the offences between husbands and wives under the penal sections of 375 and 376 will automatically cease.

The amendment made in 1925 of the age limit of consent embodied in Sections 375 and 376, Indian Penal Code, has not been given sufficient working time and therefore any further amendment proposed is premature and is also premature on the ground that Sarda Bill is under consideration. After the bill is passed the law under Penal Code may require further amendments in light of that bill. My idea is that this bill should be postponed till the Sarda Bill is passed and then final amendment be made once for all. The answers to the questions will be in the light of the observations made above.

2. *Vide* reasons given above, my idea is that the age limit of consent should be raised to 14 and 15 for marital and outsiders respectively. For husband the age limit should be 14—that is to say it would be offence under the Penal Code to have cohabitation with one's own wife if the wife is of age under 14. Cohabitation is permissive after the wife attains the age of 14. For others the age limit should be 15. When the girl attains the age of 15, she is in a position to give her consent freely taking into consideration the after-effects.

3. The offences of seduction or rape is not frequent in this part of the country. The amendment of 1925 has not got the desired effect up till now as it has not worked sufficiently long for this opinion.

4. The amendment has not postponed the consummation of marriages, has not stimulated public opinion in that direction and has not put off marriages beyond 13. My proposal is the penalising restriction of marriage age will have the desired effect.

5. The usual age at which girls attain puberty in this part is between 12 and 14. It does not differ in different castes, communities or classes of societies, but it depends upon nourishment, the better the nourishment, the sooner the appearance of puberty.

6. Cohabitation is common in this part among low classes soon after puberty and in some cases before puberty, but is common in all classes before or at the age of 13 but after puberty. A very few cases come to Court.

7—8. According to old religious injunction marriage should be performed before the age of puberty. There are two kinds of marriages, one called "Janghndan" meaning—giving away of the girl making her sit on the thigh. This is done only when the girl has not attained puberty, and other is "Pataldan"—giving away of the girl in marriage making her sit on "Patak" leaf, it is done after she has attained puberty; the former form is considered better than the latter form of marriage. The latter form is "Nesedh". The idea underlying is that the girls should be given in marriage before she attains puberty, so that when she attains that age,—she should not think of any man except the husband because it is thought a girl can only think of a man after attaining puberty and when she thinks for a man for the 1st time, she should think of her husband. There is restriction of time for Gaona Ceremony—that is, it can be performed one year, 3 years or 5 years after the marriage according as the girl attains puberty. There should be at least a year intervening between the marriage and Gaona when the marriage may be consummated. But I am sorry to say that this injunction is hardly observed and the Gaona Ceremony now is performed in almost all cases with the marriage with the consequences that the marriage is consummated either before or just after the puberty and in very few cases one year after the puberty. The result is that the health in general of females and progenies is deteriorating day by day. The second reason why the early marriage should now be avoided is this that the number of child-widows are increasing rapidly giving rise to life-long trouble and penitence to the widows and shameful disgrace to the families. Either child marriage should be stopped or widow re-marriage encouraged, the least objectionable is the former. As there is no age limit of marriage and of Gaona Ceremony they are performed now-a-days before, at and after the puberty, there being no uniformity about them.

9. I have already said that at least a year should elapse between the time when a girl attains puberty and the actual cohabitation without injury to her own health and that of her progeny.

10. I would think that the age at which a girl in India will be competent to give intelligent consent to cohabitation with a due realisation of consequence is 16—but the age limit of consent for persons beyond the marital relationship I have fixed 15. This will seem anomalous. The reason why I have fixed 15 is this. Taking the average age when a girl attains puberty to be 12 it would be a long period to wait for 4 years after attainment of puberty for prostitutes and young men of bad habits will be entangled in the offences of this nature more. There being no punishment for females the

young men will be entrapped and the penal consequences will be serious. Taking all these points into consideration, 15 is the best age which should be fixed as the age limit of consent.

11. I have come across cases of this nature but I am not in a position to give details of injuries as I have not looked into after-effects on the girls or their progenies.

12. Yes.

13. No.

14. There is sometimes hankerings for children not by the girls themselves but by their parents who have grown old.

15. There is often difficulty in this score. The best way and the only possible way of fixing the age is by X-rays operation. I had to deal a case very recently here in which the age of the girl was in question in connection with a seduction case. The evidence of the parents and their relations was that she was under 14. The birth-register also showed her age under 14, but her developments of body and features showed her to be more than 16. The medical examination also declared that she was more than 16. The difficulty was solved by X-ray operation which gave her age more than 16.

16. It will be minimised to a certain extent.

17. Distinction between marital and extra-marital offences should remain. The punishment as combined in the Penal Code is correct.

18. The procedure adopted at present is right. I would only suggest that marital offences should be made compoundable with the permission of the Court only in cases when the Court finds that injuries sustained is not of serious character not entailing upon her health permanently. The trial should be done as secretly as possible. I mean public in general should not be allowed to have access to the trial.

19. I have nothing to suggest more.

20. I think the fixing the age limit of marriage will have better result and will be in consonance with the public opinion.

21. I would rely on both. Both are necessary.

**Written Statement, dated the 11th August 1928, of Mr. JADUNATH SINGH, Secretary, Hindu Sabha and Local Theosophical Lodge, Muzaffarpore.**

1. Not much.

2. Early sexual connection results in the deterioration of the physique.

I would like making an advance in view of the advancement of education and growing public opinion all over the country.

3. Seduction is seldom heard, but rape cases sometimes occur in my part of the country.

Amendment of the law raising the Age of Consent has succeeded in preventing to a certain extent cases of rape outside the marital state.

4. Effect is not so marked within marital conditions as yet. But it may be more effective both by stimulating public opinion and by putting off marriage beyond 13 years.

5. Usually 14 years. No, not very much.

6. (1) No.

(2) Rare.

(3) No.

No, these cases do not come to court as they are matters of family scandal.

7. I am not aware of any such religious injunctions, or any penalty for their breaches.

But on the contrary early consummation of marriage is prohibited. The following is from "Susrut":—

"जन षोडश वर्षाया ममातः पञ्चविंशतिम् ।  
यथाधत्ते पुमान् गर्भं कुक्षिस्थः सविपद्यते ।  
जातो वा न चिरस्थीवे ज्योतिष्वा दुर्वलिन्द्रियः ।  
तस्मादत्यन्तं वाचायां गर्भाधानं न कारयेत् ।"  
सुस्रुत ग्रन्थस्थाने अध्याय १० श्लोक ४७ । ४८ ।

*Translation.*—"If a girl of less than 16 years of age conceives by a man of less than 25 years of age, the pregnancy results in abortion; if a child is born it won't live long, if it lives it shall be of weak organs (it shall remain a weakling for life). Therefore conception should not be allowed in early young age."

8. Yes.

It is performed generally after attainment of puberty soon or sometimes after.

9. Not generally. Not before 15 years, as the minimum age.

10. Very difficult as it all depends upon education, culture, and social environments. Highly educated girls will prefer mature age limit; less educated may not realise at all. But we may put down at 15 years at the earliest.

11. Such cases are frequent in my ordinary experience, but details are not available.

12. Yes, to a large extent and also to insanitary conditions and poverty of the people to a certain extent.

13. The only difference which can be suggested is that trials of marital the educated classes.

14. No.

15. Yes, sometimes. None other than the existing practice of taking medical opinion of experienced doctors.

16. Yes, undoubtedly. I would rather prefer above 14 years.

17. Yes. The present punishment is quite good and may be retained.

18. The only difference which can be suggested is that trials of marital offences may be held within closed doors.

19. Nothing for the present.

20. I consider legislation fixing the minimum age of marriage more effective and satisfactory than the former.

Public opinion is divided in this respect, there are dissentients also.

21. I prefer strengthening of the penal law as it will be more effective in eradication the present evil of child marriage and early maternity.

Progress of social reform by means of education and social propaganda at any rate will cause an indefinite delay in the matter.

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**Written Statement, dated the 10th August 1928, of Babu SHAILAJA PADA MUKHERJEE, Sub-Divisional Officer, Rajmahal.**

1. No such dissatisfaction has come to my notice, nor, has any been ventilated by the public in any public meeting or otherwise in this sub-division.

2. (2) I am in favour of making an advance on the present law. The circumstances which in my opinion justify making an advance on the present law are :—

- (a) The existing restrictions of cohabitation are not enough to prevent early consummation of marriage and as a result girls give birth to children before they are physically and mentally fully developed.
- (b) Such girl-mothers are too young to understand the full responsibilities of the mother.
- (c) Very often such girl's health is ruined for ever.
- (d) Their progeny are often very weak.

3. Crimes of seduction and rape are not frequent in this sub-division. The following figures for the last 8 years will show this :—

Year.	Sec. 363, I. P. C.	Sec. 376, I. P. C.
1920 . . . . .	2	2
1921 . . . . .	2	1
1922 . . . . .	...	...
1923 . . . . .	1	1
1924 . . . . .	1	3
1925 . . . . .	...	1
1926 . . . . .	...	...
1927 . . . . .	2	1

The effect of the amendment of the law is not noticeable.

4. (1) No opinion can be given on this point, as instances of consummation of marriage of married girls do not come to the notice. But as instances of childbirth at the age of 13 years or below are very rare (almost nil) it may be inferred that the consummation does not take place at an age below 14 years. I attribute this rather to the mentality of the people than to the amendment of the law.

(2) The amendment has been effective by stimulating the opinion of the educated public in that direction.

(3) Among educated classes it has been effective to some extent by putting off marriage beyond 13 years. Among the low class it has had no effect.

In my opinion, the most effective step will be to make legislation, prohibiting marriage of girls at an age below the completion of the 13th year.

5. Girls in this part of the country attain puberty generally in the 12th and 13th year and rarely in the 14th year. There is no marked difference in different castes, communities or classes of society.

6. (1) Cohabitation before puberty is rare.

(2) Cohabitation after puberty is common.

(3) Cohabitation before the girl completes 13 years is rare. None of these cases come to court.

7. There is no practice of early consummation of marriage before puberty.

Among the Hindus, there is a practice of consummation of marriage at puberty and a religious ceremony called Garbhadan is performed. But it is gradually going out of use. I cannot quote the authority for this.

Among non-Hindus, there is no religious injunction.

8. Gaona ceremony is performed by the Beharee Hindus. But there is no fixed time for this ceremony. It is performed after marriage at a time convenient to the girl's parents. Garbhadan ceremony among the Bengali Hindus is going out of use. The others have no such ceremony.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In my opinion, in the case of an ordinary healthy girl her physical development cannot be

considered to be enough to justify such consummation without injury to her own health and that of her progeny before she completes 14 years.

10. No girl in India would be competent to give an intelligent consent to cohabitation with due realisation of consequences at an age below 15 years.

11. I have come across many such cases, but cannot give details.

12. I consider that one of the causes of high maternal and infantile mortality and of other results vitally affecting the intellectual and physical progress of the people is early consummation and early maternity.

13. There is no development of public opinion in favour of extension. The public here seem to be indifferent.

14. Among uneducated and backward classes (except aborigines, such as Sonthals and Paharias) women favour early marriage of their children. But they are indifferent regarding early consummation of marriage.

15. No difficulty has been experienced in determining age as medical evidence is always taken.

16. If there is difficulty, the raising of age to 14 years would minimise it, as the physical development would help in determining it.

17. I would like to separate extra-marital and marital offences into different offences. Husbands generally are interested in the health of their wives and children, while others are indifferent and do not care for their health. The latter are nuisance to the society and therefore should get a severe punishment than the former. Punishments provided in the existing law appear to me to be adequate.

18. The difference of procedure in the existing law is sufficient.

19. No suggestion for greater safeguards is necessary.

20. I do not consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. Because, it is always difficult to know at what age cohabitation actually takes place, if cases are not brought to court. In fact, aggrieved parties in marital cases seldom come to court.

The public, however, are not in favour of any legislation fixing minimum age of marriage, and they would prefer penal legislation fixing a higher Age of Consent.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view, as I have very little faith in social reform by education and social propaganda, which will take years to gain the object in view.

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**Written Statement, dated the 11th August 1928, of Rev. I. M. MACPHIAL, M.D., Mission Hospital, Bamdah, District Monghyr.**

1. I am not aware that there is any dissatisfaction with the state of the law as to the Age of Consent in sections 375 and 376 of the Indian Penal Code; but the great majority of the people in this neighbourhood are ignorant of this law.

2. In these circumstances I do not think that it is necessary to make any change in the law.

3. As far as I can say from experience cases of seduction or rape, although not unknown, are not of frequent occurrence. I cannot say whether the amendment of the law referred to has had any effect, but no effect has been noticed by me.

4. As I have said, most people are ignorant of the law. I believe the general rule is to regard a girl who has reached puberty as fit for cohabitation with her husband. In fact I believe that to a Hindu it is a religious duty to have intercourse with his wife after she has had a menstrual period. The idea is that menstruation implies the possibility of motherhood; and in the opinion of some Hindus to neglect this opportunity is practically to incur the guilt of murder. I have heard this opinion expressed in conversation

with Hindus. The husbands of women patients in hospital, for example, have sometimes told me that in these circumstances they ought to have intercourse with their wives but that if I considered this to be undesirable on medical grounds they would abstain. The people here rarely keep an accurate record of births and in many cases can only guess the ages of their girls.

5. A girl attains puberty, as a rule, from 13 to 15, sometimes earlier and sometimes later.

6. I do not think cohabitation is common before puberty but it probably often occurs soon after puberty if puberty does not occur before the age of 13.

7. Among Hindus practically everything is done according to religious injunction. I cannot quote any injunction.

8. I do not think *Garbhadan* is commonly performed. Married couples who have no children and who desire to have them often go on pilgrimage to Baidyanath-Deoghar in the hope of getting them.

9. The attainment of puberty is not in itself a sufficient indication of physical maturity to justify consummation of marriage. No definite rule can be given regarding the time that should elapse, as general conditions, which vary with each individual, must be taken into account.

10. Girls belonging to the agricultural population who make up the great majority of the people of India are accustomed as a rule to herding cattle and become aware at an early age of the nature and consequences of cohabitation.

11. I have in my professional experience come across no cases in which premature cohabitation resulted in physical harm to a girl or her progeny.

12. On general grounds it is reasonable to suppose that premature cohabitation would result in high maternal and infantile mortality.

13. I cannot testify regarding any further development of public opinion in favour of an extension of the Age of Consent since the amendment of the law in 1925.

14. Women here do not as a rule favour early consummation of marriage in their girls. The girls are employed in field work and herding for their parents before marriage.

15. Experience shows that it is often difficult to determine age of girls. Registration is the natural remedy, but few people will take the trouble involved.

16. I do not think the difficulty or margin of error would be seriously affected by raising the Age of Consent to 14.

17. It is natural to separate extra-marital and marital offences, but the question of punishment is for lawyers to decide.

18. I cannot suggest any safeguards for protection against collusion to protect offenders or against improper prosecution.

19. Legislation raising (or fixing) the age of marriage is likely to be more effective than legislation fixing a higher age of consent for marital cases, as it is difficult to get accurate information about married people.

20. Reform by means of education and social propaganda is to be preferred to action by the penal law.

**Written Statement, dated the 11th August 1928, of Mr. EHTISHAM ALI KHAN, 1st Subordinate Judge of Saran, Chapra.**

1. As far as I am aware there is no dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.

2. In my opinion it would be advisable to make an advance in the present law of the Age of Consent. By raising age, female children will be protected



from premature cohabitation and even occasional deaths in some cases resulting from the injury caused to them by forcible connection. An advance in the present law would prove an effective check and deter people from committing an offence in this direction.

3. Crimes of seduction or rape are frequent in this part of the country. In my opinion the amendment of the law made in 1925 raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes.

4. I have no accurate information on this point as such cases seldom come to Court. There is a growing tendency amongst the educated people to put off marriage of girls beyond 13, but I think it is more due to strong public opinion and social reasons than to any penal provision. Section 376A as proposed may further protect married girls from cohabitation with their husbands within the prescribed age limit.

5. Girls in this part of country attain puberty usually at the age of 14. It differs to some extent in different castes, communities, and classes of society, but it is not very appreciable.

6. Cases falling under the three descriptions very seldom come to Court. I have no materials even to say as to whether cohabitation is common in this part of the country among any class or classes of people in the three classes referred to in this question.

7. I do not think that the practice of the early consummation of marriage before or at puberty, wherever it exists, can be attributed to religious injunction.

8. Gaona ceremony is usually performed in this part of the country. It sometimes coincides with and is sometimes anterior to the consummation of marriage. There is no rule or custom to regulate the performance of the said ceremony. Sometimes it is performed before and sometimes after the attainment of puberty. But there is however a marked inclination on the part of the guardians to perform the Gaona ceremony after the attainment of puberty.

9. I consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. At the age of 16, a girl in India would be competent to give an intelligent consent to cohabitation with due realisation of consequences.

11. In my experience I have not come across such a case.

12. I do consider early consummation and early maternity responsible for high maternal and infantile mortality. They are productive of grievous suffering and permanent injury to child-wives and of physical deterioration to the community to which they belong and also go to a great way to retard the intellectual and physical progress of the people.

13. I have no accurate information on this point, but as far as I think there has been no further development of public opinion.

14. Yes, the women in this part of the country, generally, though there are exceptions, favour early consummation of marriage for their children.

15. In determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code the only evidence available generally is that of medical expert and usually Courts act upon such evidence. No particular difficulties have been experienced in this matter.

16. Yes, if the Age of Consent is raised to 14, the difficulty or the margin of error will be materially reduced.

17. It would be better to separate extra-marital and marital offences into different offences. In case of extra-marital offences, the maximum punishment should be transportation for life and in case of marital offences, the maximum punishments may remain as they are at present as provided in the amendment of the Indian Penal Code (Act XXIX of 1925).

18. Extra-marital offences should not be made triable by jury as the trial of cases by jury renders hindrance in the way of proper administration of justice and it is this system which is, in my opinion responsible for the offenders escaping the penalties of law in some of the most serious cases. There is no objection to the marital offences being tried by jury.

19. It is impossible to suggest any measure against collusion to protect the offenders. It is possible to find out way and means against improper prosecution or extortion. The offenders in this direction should be punished sufficiently to reduce improper prosecution or extortion.

20. I think that penal legislation fixing a higher Age of Consent for marital cases would not be likely to be more effective than legislation fixing the minimum age of marriage. In my opinion, the legislation fixing the minimum age of marriage would be in consonance with public opinion in this part of the country.

21. In order to secure the object in view, I would rely very much more on the progress of social reforms by means of education and social propaganda than on the strengthening of the penal law.

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**Written Statement, dated the 11th August 1928, of Mahanth  
KRISHNA DAYAL GIR, Mahant of Bodh Gaya.**

1. No dissatisfaction.

2. India is a hot country and girls generally attain puberty at the age of 12 and so the law of the Age of Consent ought to be retained as it is.

3. Crimes of rape or seduction are not frequent here.

4. The amendment of 1925 raising the Age of Consent within the marital state has not been effective in any way.

5. Girls attain puberty usually after the age of 10 in this part of the country.

6. Cohabitation is common here soon after puberty, not before.

7. Consummation of marriage at puberty is enjoined by religion. See Parasara Smriti in Chapter 7.

अष्टवर्षा भवेत् गोरी नव वर्षा च रोहिणी

दशवर्षा भवेत् कन्या अत उर्ध्वं रजस्वला ॥

प्राप्ते तु द्वादशे वर्षे यः कन्या न प्रयच्छति ।

मासि मासि रजः तस्याः पिवन्ति पितरो निशम् ॥

माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।

त्रयस्ते नरकां यान्ति दृष्ट्वा कन्यां रजरत्नम् ॥

8. Gaona or Garbhadan ceremony is not usually performed in this part of the country. Gaona is not performed till they attain puberty.

9. Yes, the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. After the age of 11.

11. Cohabitation before puberty results in injury to health of the girls.

12. There is no early consummation in this part of the country. The intellectual and physical progress of the people is affected by other dietary causes.

13. There has been no further development of public opinion in favour of extension of the Age of Consent since the amendment of the law in 1925.

14. Yes, women favour consummation when there is puberty.
15. There is difficulty sometimes in ascertaining the proper age.
16. No. Difficulty in determining the age will not be reduced if the Age of Consent be raised as proposed.
17. Extra-marital and marital offences should be separated. Marital offences should be punished lightly.
18. Marital offences should be tried by village panchayat, not in Court.
19. If the case is tried by Divya (occult) Shashtric Methods.
20. Penal legislation fixing a higher Age of Consent for marital cases is not likely to be more effective. No further legislation is necessary.
21. I would prefer to secure the object in view on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 11th August 1928, of Babu NARENDRA NATH BANERJI, Additional Subordinate Judge, Ranchi.**

1. No, as far as I know.
2. (1) The present law has made a difference between the marital and non-marital offences of rape. In my opinion to obliterate the difference between them would be neither for the advantage of the woman nor liked by the men in India who have hitherto been accustomed by social rules to consider an invasion upon their married status an unwarrantable intrusion of the state.
- (2) I see no reason to make any advance upon the present law.
3. There is not much of seduction or rape in this part of the country. The amendment of the law has not succeeded in preventing this offence or reducing the number of this offence. I do not consider it necessary to raise the Age of Consent above 14 years for strangers because in my opinion that would increase this offence. If girls remain unmarried beyond that age, then the chances of seduction will be increased, especially in a community where there is already a great prevalence of this offence.
4. This is a difficult question to answer because the fact of cohabitation within the married state before 13 is seldom known unless there is some physical injury consequent upon the act. In my opinion, that husband is a heartless brute who would injure his wife and it must be left to him rather than to law to determine at what age the sexual intercourse should commence. If, however, the state thinks it necessary to prevent marriage beyond a certain date, that is matter which must depend upon the choice of the people themselves. No effect has been produced by the raising of the Age of Consent up to 13 years in the case of the husband except that this measure has evoked public discussion and thereby has stimulated public opinion, though not in a very definite manner. The whole question of raising of age of marriage or consent is dependent upon economic causes and upon raising the standard of living. If it is left to the operation of these causes, direct legislation is not necessary and would be harmful among lower classes because there it would increase economic difficulty and also crime. I therefore do not propose to make any suggestion in the shape of a definite legislation.
5. They generally attain puberty between 12 and 13. This age differs in different communities according to their physical and social habits.
6. Cohabitation is not common in any class before puberty and is not common amongst the uneducated and orthodox types before 13. It was never so amongst educated Bengalees formerly, when the social rule of *Duiragaman* or *Gaona* was observed, but there are very few girls married before 13 in that community at present. No such cases come before the court.

7. I do not attribute early consummation of marriage to religious injunction. The other questions therefore do not arise. I protest against the possible suggestion that religion is responsible for early consummation and the form of the question.

8. The ceremony of Garbhadan is performed on the attainment of puberty. In Bengal community of the educated classes, there is no occasion to perform this ceremony, because in most cases marriage takes place after the attainment of puberty. If there had been marriage before puberty the ceremony takes place with the first menstrual discharge. *Gowna* is a different thing from *Garbhadan*. It is called *Dwiragaman* ceremony and takes place for the first time after marriage, when the wife goes to her husband. This ceremony does not take place until after attainment of maturity and is more rigidly followed in Upper India than in Lower Bengal. This custom, if strictly followed, would render much of this legislation (which would expose married couples if carried into effect) unnecessary.

9. No. In my opinion consummation should not take place at least for 2 years after the attainment of puberty.

10. It is difficult to answer this question because a due realisation of the consequences of marriage is a matter which is decided by the parents of the girls rather than by herself. Unlike people of the West, the matter is not the individual concern of the girl in India.

11. I have no experience of this. Members of the medical profession may have such experiences.

12. In my opinion early maturity is responsible for infantile mortality. It is also increasing in spite of increase of the age of marriage amongst the educated Bengali community because the young mothers have generally very little physical exercise and do not train themselves to rear their own children. They are beginning to look upon rearing of their children as a burden and in rich families this is often left to wet nurses, *ayas* and others. This neglect of children is growing into a habit in some communities. The school education that the girl gets generally makes them neglect domestic duties and when they become mothers they cannot look after themselves or their progeny.

13. There is no development of public opinion in this matter after the amendment of law.

14. No. The educated girls dislike getting children.

15. I have not tried cases relating to offences under sections 375 and 376, Indian Penal Code.

16. The age of a girl of 14 can be more easily determined than one below it.

17. Yes; I would separate the two offences. In the case of marital offences unless grievous hurt is caused, the punishment should be simple imprisonment of one year only. The effect of any severe punishment would embitter the marriage tie. There is no need to change the prescribed limit of punishment in the case of non-marital offence.

18. In case of marital offences a summary proceeding before select Magistrates is necessary and proper decency must be observed because the married couple should not be unduly exposed.

19. Before undertaking legislation it is necessary to collect materials. I would suggest that age of marriage like birth and death should be registered at the *thana*.

20. A legislation fixing a higher age of marriage is, in my opinion, harmful at least as regards agricultural labourers and domestic servants. The Age of Consent for marital offences should not be increased beyond 13 years. (See my answer to question No. 4.)

21. I rely on the progress of social ideas rather than on the strengthening of the penal law.

**Written Statement, dated the 12th August 1928, of Mr. DURGADASS  
SONDHI, B.A., Muzaffarpore.**

1. Yes, amongst the people who think about these matters.

2. An advance should be made on the present limits—

(a) because the consent is not genuine as she is—

(i) too young to understand consequences,

(ii) too young to express refusal,

(b) because even if genuine it gives birth to evils.

(A) Individual,

(B) Social.

(A) It causes—

(i) often great misery for the child-wife,

(ii) retards her full growth—physical and intellectual,

(iii) too early a pregnancy is often fatal,

(iv) present-day education of girls taxes her energy too much  
and she can't bear the strain of child-bearing.

(B) It causes—

(v) weakling children, consequential high death rate and very  
low physique of the race,

(vi) she is a mother, before she has learnt the art of bringing up  
children—still worse results for the race,

(vii) early encumbrance acts as handicap on education of females,

(viii) earlier the increase in family, lesser the chances of the father  
to better his economic status.

The strongest reason is of course physical deterioration of the race.

3. Not frequent but they exist. Amendment of 1925 is not known to masses yet. Girls in teens cannot withstand the cross-examination, especially as court languages is full of technicalities and is not the language of the people.

I would suggest that courts should insist on spoken language which is explicit to the complainant and courts should not rely on benefit of doubt for the accused. Raising of age should be well published and promulgated through leaflets and Choukidars in villages and High Schools and Colleges so that people may be aware of it. This solitary amendment of law cannot have the effect of preventing offences of rape and seduction. An all-round raising the status of women and female education will be more effective.

4. (1—3) No.

Amendment of law has made no difference as people are not generally aware of the change. Whatever change for the better has taken place is due to progress in public ideas and also due to economic troubles. I would suggest that it should be made known to people as suggested in answer to question No. 3. Also raising of the status of women and passing of laws for making the dissolution of Hindu marriage should be taken up.

5. 12 to 14 years. It is lower in well-to-do classes and higher in labourer classes. Communities make no difference but class of society does and castes depend upon classes of society generally. The age of puberty is sure to increase with better physique of the girls and with postponement of their sexual ideas which follow early marriage generally, by giving them healthier pursuits of education, physically active life and postponement of marriage and its consummation.

6. Within marital relations there is no consideration about age, or puberty. Classes which allow marriage before puberty but have no system of "Gaona" ceremony or second marriage (that is when girl goes to husband's house and

stays there) subject girls to early cohabitation. It is earlier in this province among the so-called higher classes. Among the lower castes marriage is early but cohabitation later. Such cases do not generally come to court: as people do not realize that it is an offence and an idea that husband has the privilege is prevalent and such cases occur mostly in well-to-do classes of society and the idea of indecency in taking such matters to court, acts as preventive.

7. Consummation of marriage before or at puberty is not a religious injunction. No part of Hindu Shastras enjoin it, rather what is found is against this custom and against the spirit of religion. It is found in some Purans whose age is recent and is partly due to mischievous interpolations in them: but they are for early marriage but not early consummation. The custom of early marriage was probably introduced during Mohammanadan period under which law kidnapping of unmarried girls for the purpose of marriage was not considered as offence by the then Kajis. As a remedy the tradition seems to have been started and tackled on to religion that "a father does not obtain the religious benefits of giving his daughter in marriage if she attains puberty before marriage and will be held responsible by God for committing a sin." For a licentious person a girl before puberty has no attraction. It is only after that period when her appearance develops into womanhood and charm which would attract. Therefore the tradition that marriage before puberty but second marriage "Gaona" after 5 to 9 years was introduced. Married girls were immune under the then interpretation of law of the ruling powers from such molestation, therefore early marriage came in vogue but late second marriage effectively checked early consummation. Later on economic troubles and desire to beget children has reduced the period of second marriage and some classes have altogether dispensed with it, as the time for consummation. People having not read Sanskrit and religious books take it as a religious injunction although it was merely an expedient for the time being. Necessity having gone, the custom should be stopped as well.

8. By Gaona I understand second marriage and Garbhadan means ceremony of pregnancy. In this part two are separate ceremonies. Gaona is performed before consummation of marriage and Garbhadan after it. Amongst labour classes Gaona is always performed long after puberty, amongst higher classes generally after puberty.

9. No, consummation should not take place at least 4 years after puberty; it is only the first indication of the beginning of her physical development into womanhood. Some period is necessary to allow her to mature into development before the hard strain of begetting children is placed upon her. An undeveloped physical constitution can only produce weaklings.

10. I am not a professional man, but I have observed what happens amongst my relations, friends and acquaintances and other cases. Cohabitation instructions in these matters, she gets no opportunity to know and think of grave consequences.

11. I am not a professional man, but I have observed what happens amongst my relations, friends and acquaintances and other cases. Cohabitation before puberty has resulted in physical injury invalidating the girl for long years. Cohabitation after puberty but before full development has resulted in life-long diseases, special to women, stoppage of further growth, weaklings for children and in most cases inability to beget more children after the age of 25 years. I have noticed that girls who started children in early age have not borne any children after 25 years of age. I have put 25 as a rough idea.

12. Early consummation and early maternity is responsible for (1) high maternal mortality, (2) high infantile mortality, (3) retards physical growth of children and mother both, (4) vitally effects and stunts the intellectual powers of both.

13. Thinking and educated people are in favour of extension. Village propaganda is necessary.

14. Not generally but some ignorant females who have not male children desire it.

15. There are lot of difficulties. I would suggest that birth registration should be more effective and easily available. Registration of birth, marriage and birth of children should be kept more carefully. These three entries should be compared and history of all the female population or of selected case be gone into by specially appointed officers. In this way child-birth within the age limits shall be easily detected. Such extensive statistics will be expensive but necessary for the vital issues involved.

16. It will be materially reduced if age is raised to 16 years.

17. Yes, I would suggest separation; most severe punishment for extra-marital offences. For marital offences fine up to Rs. 500 or simple imprisonment up to one year would suffice. It is a new offence for the people, let them be aware of it before higher punishment is warranted. Heavy fine and lighter imprisonment will be more effective in cases of marital offences. Often times it is the fear of the disastrous consequences to the husband which causes the complaint and the evidence to be hushed up.

18. Yes, there ought to be difference. For marital offences procedure should be simple and private so as to avoid exposure.

19. No safeguards except people's honesty and sense of responsibility of citizenship will suffice. New checks will afford new ways and means. Also parents should be held responsible where early consummation takes place. Giving women more independence by passing laws about freer dissolution of marriage, inheritances of property by women, also by social measures of education and abolition of Parda.

20. Fixing minimum age of marriage and second marriage "Gaona" will be more effective to prevent early consummation if this minimum be not lower than 15 years. Fixing of minimum age for marriage is more desired. If age be kept lower then both minimum age for marriage and for consummation are necessary. But the latter will be required even in spite of the former, not only in extra-marital offences but in cases where marriage has taken place in spite of the law.

21. I would prefer the strength of the penal law to secure the object. Progress of social reform by education and social propaganda is infinitesimal. Education is at a very low percentage and it will take perhaps another 100 years to reach a 50 per cent. ratio: by which time the progeny born of early consummation will not have left any physical or intellectual strength to consider their good. *Sati* custom was considered atrocious and stopped by means of penal legislation. The consequences of early consummation are far more atrocious and disastrous and vaster than a *Sati* custom and deserve greater help from legislation. *Sati* also was a so-called religious injunction as early marriage and when legislation was passed people accepted it as a fact and have followed it. Similarly consideration of religious susceptibilities should not check the Government or legislature from fulfilling a crying need. Same spirit as in *Sati* legislation should see it through.

It is a wonder why the Government is so anxious to consult the public about such reforms. The lack of education in the country may make some people to oppose such measures. When Government could pass and enforce laws for abolition of *Sati* and rights to property after conversion why not enforce prevention of more cruel and a million times more harmful practices. Government should not think twice over these measures.

**Written Statement, dated the 13th August 1928, of Mrs. SAYITRI RANEE SEWAL, Chapra.**

1—2. Educated class do not have their daughters married before 14—others at the present circumstances of the country cannot afford to have their daughters married before 14—so this does not much interfere with the mass.

3—4. The amendment of 1925 has succeeded in protecting both married and unmarried girls from cohabitation before 13.

5. Average age at which girls attain puberty is 13—but hard working, poor classes attain it later than those of rich and well-fed classes.

6. (1—3) It is generally found among poor Rajputs and Brahmins who have to pay for a bride according to age (i.e., older the bride higher the price).

Yes, they come to Court sometimes.

8. Yes, and it does coincide with consummation of marriage (but some poor people have the ceremony done during the marriage ceremony to avoid expenses). It is generally performed after the attainment of puberty.

9. No, at least after 3 years.

10. Not before 17 if not 18.

11. Yes. A girl was married at the age of 11, during 6 years of her married life—four children were born—all died except one, the second child. She is little better than an imbecile—prey to hysteria and other diseases.

12. Yes.

13. Yes, but only confined to highly educated classes.

14. No.

**Written Statement, dated the 13th August 1928, of Mr. A. D. BANERJEE, M.A., Sub-Divisional Officer, Jamtara.**

1. No dissatisfaction except among the few educated and those of advanced ways of thought.

2. An advance on the present law of consent is required in the interest of the health of the girls.

3. These crimes are not frequent in this part of the country. No appreciable effect has been noticed by raising the Age of Consent to 14 years by the amendment of 1925. Rapes and seductions will always occur and the only measure to mitigate the evil is to raise the Age of Consent to 16 years so that the girls concerned are at least of sufficient understanding to know the nature and consequences of the act.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years, has not protected married girls from cohabitation with husbands within the prescribed age-limit. Such cases are not brought to public notice, and a girl-wife, out of modesty, is not likely to inform any one, even her relatives, of such cohabitation. Such instances can only be known when the child is born, and even then, neither the girl nor any relative of her would go to a Court and prosecute the husband for cohabitation within the prescribed age-limit. There is, however, a growing public opinion against early cohabitation among the educated and semi-educated masses.

The only way to stop cohabitation with girls within the prescribed age-limit is to penalise marriages between boys and girls below certain age-limits (at least at ages 18 and 14 respectively as in Mr. Sarda's Bill). So far as cohabitation within the marital state is concerned sections 375 and 376, Indian Penal Code, in whichever way they are framed will have no effect, for the simple reason that there will be no prosecutors.

5. 12 to 13 is the usual age at which girls attain puberty. There is not much difference about this among different castes or classes of society.

6. (1) Not among the high and middle classes but among the lower classes.

(2) Yes, fairly among lower classes but not very common among the higher classes.

(3) Ditto as above.

Such cases do not come before Court, as far as my experience goes.

7. Cohabitation before puberty is forbidden in many texts of Hindu Shastras for which expiation is needed.



As for respective marriageable ages of males and females, we have the highest authority of the Sushruta that the male when he is 25 years old and the female when she is 16 can be considered to have their powers equal.

पञ्च विंशे ततो वर्षे पुमान् नारी तु षोडशे ।

समत्वागत वीर्यो तौ जानीयात् कुशलो भिषक् ॥

Again it is laid down on the same authority that if a male under 25 impregnates a girl under 16, their issue is endangered in the womb itself, if it is delivered, it does not live long, or lives a weakling. One who is too young should not be impregnated.

उनषोडश वर्षायाम्प्राप्तः पञ्च विंशतिं ।

यद्याधत्ते पुमान् गर्भः कुक्षिस्थः स विपद्यते ॥

जातो वा न चिरं जीवेत् जीवेद्वा दुर्बलेन्द्रियः ।

तस्मादत्यन्तबालायां गर्भाधानं न कारयेत् ॥

8. The "Gaona" ceremony is performed after the attainment of puberty, and as soon after it, as the parties find it convenient. It means expenses and so there is some delay.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. For such consummation, I would fix the age of the girl at 16.

10. At the age of 16.

11. I cannot give details but I have seen instances of early child-bearing with sickly mothers and sickly babies and both ailing and the mother's health considerably undermined.

12. Yes.

13. There has been no general development of public opinion, except among a section of the educated few of the advanced views.

14. Yes, generally they do, but here again among the women of educated families, there is a growing opinion against the early consummation of marriage.

15. Yes, there are difficulties, and it is difficult to suggest measures. The raising of the Age of Consent to 16 years will protect girls up to 14 within a safe limit.

16. *Idem* reply above to No. 15.

17. Yes. Punishment as at present is sufficient.

18. Procedure as at present will do.

19. I have no new suggestion to make.

20. I think a legislation fixing the minimum age of marriage will be more effective than a penal legislation fixing a higher Age of Consent for marital cases. No marital cases are likely to come up to court and the penal legislation as it is, is practically a dead letter and it will remain so. The effective step is to stop early marriage. Public opinion is against both the alternatives, except among the educated few of advanced ideas.

21. I would in these matters rather rely on the progress of social reform by means of education and social propaganda than by modifying or strengthening the existing penal law. There is a growing public opinion, and it needs to be fostered by social propaganda, and this will be more effective and more beneficial in its effect than a compulsory measure by legislating laws and punishments. All this must come from the society and not thrust upon it. There is the economic factor and it is acting slowly but none the less surely towards raising the ages of marriageable boys and girls. I think these matters should be left to the social workers and reformers, and they will adjust themselves with the spread of education and growth of a general opinion.

**Written Statement, dated the 12th August 1928, of Rai Bahadur  
DAYANIDHI DAS, District Magistrate, Puri.**

In Orissa except among the Brahmins, Banias and a few other classes adult marriage is the rule, and castes which formerly strictly followed child marriage are gradually but surely raising the marriageable age of girls. The general trend of public opinion is in that direction and certain respectable classes, such as Karans, Mahanaiks, Khandaits, etc., and others having taken to adult marriage since time immemorial, other classes are gradually following suit and public opinion is veering round in favour of it. Even among the castes which still stick to child marriage, cohabitation before or immediately after puberty is absolutely unknown in Orissa. It is the rule among such classes that the child wife goes to her husband's house immediately after marriage but stays there till the 7th day and during this time the husband and wife are never allowed to come together. The child wife usually returns to her father's house on the 8th day where she stays till she attains puberty. When this event takes place, the girl's people send words to her husband's house. Certain astrological calculations, based on the day and hour when menstruation first occurs, are made and a period varying between 5 months to a year is prescribed as *Gunda*, that is, inauspicious for consummation of the marriage. After this period is over, an auspicious day is fixed for the purpose of what is termed as *Punaribaha* or re-marriage, when after certain religious ceremonies, the husband and wife are allowed to come together. With all these restrictions usually a year and sometimes two years or more from the date of her puberty passes before the child-wife shares her husband's bed.

Having stated the special conditions prevailing in Orissa I now proceed to answer the queries:—

1. There is no great dissatisfaction as to the state of the law in regard to Age of Consent as contained in Sections 375 and 376, Indian Penal Code, inasmuch as the evil which it is meant to eradicate does not exist in Orissa.

2. The Age of Consent for criminal liability of the husband is 13 and of a stranger 14. There is no reason why this difference should exist. In both cases, Age of Consent may be fixed at 14. Except for malnutrition or some constitutional defect puberty among girls in this country usually takes place between the ages of 11 and 13; and usually a girl is considered fully developed by the time she completes her 14th year.

3. Crimes of seduction or rape are not frequent in this part of the country. The 1925 amendment raising the Age of Consent to 14 does not appear to have had any appreciable effect. A girl in this part of the country can be taken to have attained full mental and physical development by the time she has completed 14 years of age and her consent to cohabitation may be taken to be valid.

4. The raising of the Age of Consent consequent on the agitation created a revolution in Bengal in the marriageable age of girls, and marriage before puberty is now rather an exception than the rule. It also had the effect of postponing the consummation of marriage and stimulated public opinion in that direction. The amendment of 1925 has further strengthened this tendency and if the present movement results in raising the Age of Consent to 14, we would have reached the necessary limit and afforded married girls all the protection that is needed.

5. Cohabitation before puberty or soon after puberty is almost unknown in this part of the country; and cohabitation before the girl has completed 13 years of age is very very rare. Some cases did occur years back but that has ceased now. No such case has ever come to Court.

6. Experience of the customs obtaining among the classes in this part of the country which still practise early marriage would go to show that consummation of marriage before or at puberty is against religious injunction

rather than supported by it. There is nothing in the Shastras enjoining such inhuman practice.

8. *Garbhadhan* ceremony is not in vogue in this country among any castes except perhaps among some high caste Brahmins.

9. Puberty is no doubt a natural indication that the girl has reached a marked stage in her development; and if the girl has grown up under extraordinarily healthy condition consummation of marriage soon after cannot be harmful. Under normal conditions a year after puberty is enough to justify consummation of marriage without harm to the woman or her progeny.

10. In India a girl at the age of 14 or at most 15 may be considered competent to give intelligent consent to cohabitation.

11. I have vague remembrance of having heard of one or two such cases, but cannot give details.

12. In Orissa child marriage or early consummation is not at all common; and maternal or infantile mortality is attributable to other causes than this.

13. Public opinion in Orissa is rather indifferent in the matter as the evil in question may be said to be almost non-existent here.

14. No, rather the contrary.

15. No. There was no such difficulty to my knowledge.

17. There does not appear any necessity to distinguish between marital or extra-marital offences in this connection, as practically the offence is equally heinous in either case. Of course, the trying Court is expected to use his discretion in awarding punishment according to the nature of the case.

18. Existing procedure seems quite suitable.

19. No such safeguards seem called for from past experience.

20. Legislation fixing the maximum age of marriage would be a direct attack on the evil and would certainly be more effective than the indirect method of raising Age of Consent. The latter however would be more in consonance with public opinion, although people would, in their heart of hearts, welcome direct legislation raising the marital age as it would give them some respite in finding out a suitable husband for their daughters by no means an easy task.

21. Progress of social reform and education and social propaganda are doing their work; still legislation is called for to help these. That the proposed measures have come from non-official sources is a sufficient indication that public opinion is in favour of such legislation.

**Written Statement, dated the 13th August 1928, of Mr. BAJRANG DUTT SHARMA, Secretary, Bihar Hindu Provincial Sabha, Patna.**

1. There is dissatisfaction with the state or law so far as sexual intercourse outside the marital state is concerned.

2. Females with unripe discretion fall into the trap of designing licentious persons and undergo lifelong misery. Hence it is necessary to raise the Age of Consent in such cases. The reasons justifying the rebution of the law as to the Age of Consent in the marital state is that in the present condition of society in this Province. If a girl remains unmarried at the age of 15 their guardians are censured and the fact gives rise to a variety of suspicious and surmises which make her marriage a difficult problem.

3. No. So short a time has elapsed since the amendment of 1925 that it is difficult to say how far it has operated to prevent or reduce cases of rape outside the marital state or seduction of girls.

4. Yes. Cases of marriages and gaona being put off beyond the age of 13 have come within our experience.

5. In this part of the country girls attain puberty generally between the age of 13 and 14. We find that the difference in ages when puberty is attained does not differ with the difference of castes, classes or communities. In communities which lead a life of affluence and ease, and wherein there is plenty of rich food girls attain puberty at an earlier age than in families not so circumstanced.

6. As a rule cohabitation does not take place before the age of 13 or 14, in this part of the country. Instances of cohabitation in a marital state before menstruation are rare; and there is hardly a case of cohabitation before the girl is 13 years old.

Cases of rape and seduction for immoral purposes sometimes do not come to Court owing to the difficulties of criminal litigation.

7. Generally speaking there is no cohabitation in a marital state before attainment of puberty, and even of such a case arises it is not due to religious injunctions. Such a case if it arises at all is due to the fact that parents get their children married being unable to even owing to their poverty especially when a suitable match becomes available.

8. Yes, *Gauna* is performed in this part of the country. The only means that after her marriage the girls is taken for the first time to her husband's abode. It does not necessarily coincide with consummation.

There is *Garbhadhan* ceremony in this part of the country.

9. No, not in all cases. So far as our knowledge and experience go cohabitation at the age of 13 to 15 with one's husband is not as a rule attended with enquiry to lives, health or to her progeny.

10. We cannot speak for India as a whole. But so far as our province is concerned we can safely say that a girl becomes competent to give an intelligent consent to her husband's cohabiting with him. A girl would not however be deemed to give consent to cohabitation outside the marital state with due realisation of consequences.

11. Instances of cohabitation before attainment of puberty come within the cognisance of medical people alone, *eg.*, cases have been known in which cohabitation has resulted in laceration of the vagina and perineal tears resulting in weakness of the heart and the brain.

12. Early cohabitation and early maternity do form one of the causes of high maternal and infantile mortality. But it is mainly due to the fact that old females have forgotten the old Indian system of looking after their girls during their pregnancy as well as of bringing up infants and western method are not suited to our social and domestic conditions and cannot be conveniently admitted and also partly due to milk and ghee not being available.

13. There was strong public opinion prior to the amendment of 1925 about the Age of Consent being raised with respect to intercourse in extra-marital cases and has not been satisfied with the amendment of 1925.

14. No.

15. Difficulties, if any, are discovered by the statements of parents and the examination of doctors.

16. Yes.

17. Yes. And we would recommend that the cases of marital offences the sentence should not be so heavy and that the law should be amended in this respect and the sentences in such cases should not exceed rigorous imprisonment for 2 years in addition to fine.

18—19. No.

20. Many are of opinion that the fixing of a high Age of Consent for marital cases is likely to be more effective whilst many others would oppose the fixing of the age for marriage.

21. Our view is that in order to secure the object in view the strengthening of the penal law should go hand in hand with social reform by means of education and social propaganda.

**Written Statement, dated the 13th August 1928, of Babu PURNA CHANDRA GHOSH, Government Pleader, Gaya.**

1. There are some who think that the Age of Consent in the case of an offence or rape by a stranger ought at least to be sixteen and not fourteen as the law now stands. Besides this, there is no other dissatisfaction so far as I am aware.
2. I am in favour of an advance on the present law. Early cohabitation leads to early conception,—before the girl is fully developed in body and mind. This shatters her health resulting not unfrequently in an early death. The child of such a mother is generally born weak and the rate of infant mortality is consequently very high in India. The girls in this country ought not to conceive before sixteen.
3. (a) Not very frequent.
- (b) No prevention or reduction, so far as I can see.
- (c) Mere legislation is not likely to be of any use. Popular education and creation of healthy public opinion are the only means to put an effective check on crimes of this kind.
4. The amendment of 1925 had no such effect. Heavy increase in the dowry payable on the occasion of a girl's marriage has done what legislation failed to do. This increase has resulted in putting off marriage of girls beyond 13.
5. 13 and 14 in the case of girls of higher classes; 15 and 16 in the case of girls of poorer and labouring classes.
6. (1) Before puberty—There are instances but not very common.
- (2) Soon after puberty—very common.
- (3) Before the girl completes 13 years—not very common.
- These cases never come to Court.
7. The religious injunction is to the effect that a man should have sexual intercourse with his wife once and only once after each mense. It is mandatory according to the Hindu shastras. But people now-a-days care very little for it. The educated people do not care for it. The masses are not aware of this. I am unable to quote chapter and verses.
8. 'Gaona' and 'Garbhadhan' are two entirely different ceremonies. Gaona is a corruption of the word 'Dwira-gaman'. This means 'coming to the husband's house a second time'. The bride comes to the husband's house for the first time during her marriage and she comes the second time to her husband's house during the Gaona or the Dwira-gaman ceremony. The word 'Garbhadhan' literally means 'placing of the fetus in the womb'. This is no doubt the consummation of the marriage.
- The 'Gaona' and not the 'Garbhadhan' ceremony—is performed in this part of the country. It has nothing to do with the consummation of the marriage. The consummation may take place either before or after the Gaona. It is generally performed after the girl attains puberty. Ordinarily it takes place soon after the puberty but there is no harm if it is delayed.
9. No. The consummation ought to take place some time after attainment of puberty—say—a year and a half or two.
10. 15.
11. I know of two girls each of whom attained puberty at ten and gave birth to a child at twelve. The child in each case died soon after its birth. The girls also died a few years after. I have come across other instances of injury due to early conception but I am unable to give details.
12. Yes.
13. Yes, but it is confined to educated classes only.
14. Yes, excepting, of course in those families in which the females also are fairly educated.
15. I am not at present in touch with the criminal branch of our profession. I used to have some criminal practice formerly, and from whatever

I remember of it, I think that difficulties are experienced at times in determining the age of girls in connection with offences under Sections 375 and 376, Indian Penal Code. This is particularly so with regard to the age of girls between 13 and 16. A better system of birth registration may minimise the difficulties.

16. Not materially.

17. Yes. The cases of extra-marital offences should be dealt with as at present. The cases of marital offences should be punishable only with a fine—may be a heavy fine, say,—up to Rs. 1,000.

18. The cases of marital offences may be made triable by Magistrates of first class as warrant cases.

19. No.

20. No. Legislation fixing the minimum age of marriage is likely to be more effective. The public opinion here seems to be equally divided.

21. I prefer to rely on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 11th August 1928, of Mr. RANJIT SINHA, Government Pleader, Bhagalpur, Bihar and Orissa.**

1. Yes. Particularly amongst educated females who consider it too low. Much agitation is carried on by them in public meetings and also in the papers which must be well-known to the Committee.

2. (1) I find no justification in retaining the present age limit.

(2) The circumstances which justify the making an advance on the present law are 1st, there is a volume of advanced public opinion in its favour; 2ndly, such opinion as may have been expressed against it is feeble and too much conservative which has nothing reasonable in its support except bare assertion of opinion; 3rdly economic and physiological reasons are preponderating in favour of the raising of age for marriage which can be done indirectly to a certain extent by raising the Age of Consent in Section 375, Indian Penal Code (exception); 4thly, with the spread of education and general change in the angle of vision of the public it will be essentially necessary to make some advance on this branch of the law.

3. I do not think it is so. I have no statistics to go upon and therefore unable to say anything with regard to the second part of the question.

4. I am unable to answer points (1) and (2) of this question but with regard to (3) I think it has had some effect, although very small.

For the purpose of putting off marriage of girls beyond the age of 13 I would propose a compulsory raising (even by legislation if necessary) of the age of marriage for boys. This can be, in the first instance, effectively done if it is made a rule that married boys (married after a particular date in future so as to give sufficient notice to the public) will not be admitted to schools and colleges. This will be the line of least resistance and I strongly believe will be supported by the Universities and a large section of the public. As the education of girls is not considered to be a necessity in this country I would for the present not propose such a rule for school or college going girls as it might have a tendency to discourage the education of girls. But I think that the raising of age of marriage for boys will necessarily raise the age of marriage for girls. Those persons who quote the Shastras in defence of child marriage ought to remember what Yajnavalkya has said (1,52—53) "Let a man who has finished his studentship espouse an auspicious wife, etc."

5. I think 13 is the usual age. It is possible that girls belonging to well-to-do families (irrespective of caste or community) attain puberty earlier

than girls not so placed. But even in that case I should think that the difference will not be more than a year or two.

6. I cannot say. So far as I am aware there has been no such case in Court during my experience here for the last 21 years.

7. In backward communities it may be that owing to some so-called religious injunction consummation of marriage takes place shortly *after* the attainment of puberty. If there is any religious injunction at all it is *against* consummation *before* puberty. (E.g., *Nirnaya Sindhu*: "A man shall not approach the wife before the appearance of catamenia; approaching becomes degraded, and incurs sin of slaying a Brahman, etc."). The injunctions referred to are more of a social nature than religious, although they are sought to be supported in the name of religion. But even then the whole text is not followed in practice, e.g., *Manu*, ix, 94: "Let a man of thirty years marry an agreeable girl of twelve years or a man of thrice eight years, a girl of eight years; one marrying earlier deviates from duty, etc.". This text is quoted to justify early marriage of girls. But what about this very text so far as it relates to the male? According to this text a man ought not to marry earlier than 24 years, unless "to prevent failure of religious rite," which is an exception to the general rule. Unfortunately the exception has become the general rule. Again, the text of *Yama* (22, 23) is relied on by some: "If a girl be not given in marriage when she has reached the 12th year, her mother and father as well as her elder brother these three go to the infernal regions having seen her catamenia before marriage. That Brahman who espouses such a girl should not be accosted, etc." But then one may say that this is meant for Brahmans only. Some of the texts on the question of the age of marriage are quoted in *Shastri's Hindu Law*, 6th Ed. Ch. III, page 111, *et seq.*, I may also refer to the religious sects of *Sannyasins* (anchorites) and *kumaris* (maidens) who pass lives of celibacy; and they are highly respected by orthodox Hindus.

8. 'Gaona' ceremony is usually performed but 'Garbhadhan' ceremony has fallen into disuse. 'Gaona' ceremony is held usually anterior to the consummation of marriage. It is performed generally soon after the attainment of puberty.

9. I do not consider that the mere attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Various factors, physiological as well as economic, ought to be considered in this connection. I should think that the child-bearing age of females in this country should not begin at least before their attainment of majority (i.e., 18 years).

10. Certainly not before her age of majority.

11. No such case has come to Court here in the course of my professional experience.

12. Most certainly. It ruins the health of the mother and makes her a physical wreck. In addition, it brings in economic trouble in the family by multiplication of weak and suffering children. Undoubtedly it vitally affects progress of the people.

13. To a certain extent there is. I should think it is confined only to a portion of the educated classes.

14. They are now turning against the early consummation of marriage.

15. I am not aware (so far as the first part of the question is concerned as cases on these sections are fortunately rather rare). I would suggest the compulsory registration of birth in all localities (and not merely in Municipal areas) and preservation of the Registers for 15 or 16 instead of 3 years, as is the rule now.

16. I don't think that the raising of the Age of Consent will do away with the difficulty or margin of error in determining the age of girls.

17. I rather would. Punishment ought to be lighter in the case of "marital offences" than in the case of "extra-marital offences".

18. No. I don't find any necessity for such a course.

19. I think the present safeguards (*e.g.*, Sections 193, 211, Indian Penal Code and Section 476, Criminal Procedure Code) are quite sufficient for this purpose.

20. No. I consider that "legislation fixing the minimum age of marriage" is likely to be more effective. As this has been done in some parts of India containing large number of Hindu population I do not see what objection could there be on this score in British India. Even if public opinion be tardy on this point I consider legislation a necessity.

21. The "progress of social reform by means of education and social propaganda" is so slow and is of such doubtful efficacy that I have little faith in them.

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**Written Statement, dated the 14th August 1928, of Babu ASHUTOSH SINGH, Deputy Magistrate and Deputy Collector, Girdih.**

1. There is no dissatisfaction with the state of the laws as contained in Sections 375 and 376, Indian Penal Code.

2. Indian girls attain puberty at an earlier age than girls in colder climates. Hence any further advance of the present law of the Age of Consent is likely to be misconstrued by orthodox communities.

3. Crimes of rape and seduction are not common in my part of the country. Proper education both for boys and girls would make the law effective.

4. Public opinion has changed now and girls are not married young.

5. Between 13 to 16 years of age, a girl attains puberty and girls in well-to-do families attain it earlier.

6. Cohabitation is common after a girl attains puberty, for if the marriage is celebrated before puberty, the girl generally remains at her father's house until she attains puberty.

7. No. I do not know of any religious injunction for early consummation of marriage. People in easy circumstances want to see their grandsons born before they die.

8. *Gaona* is prevalent in Bihar. It sometimes coincides and is sometimes anterior to the consummation of marriage.

9. Attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. At 14 or 15 years of age.

11. Diseased mothers suffer by childbirths even after the attainment of puberty.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality and for the poverty of the middle class people.

13. None.

14. Only well-to-do and fond women do as I have stated above.

15. The age of girls in Courts is generally determined by medical witnesses. Horoscopes and more strict application of the law of birth registration.

16. No difference.

17. Yes. Marital offences ought to be made compoundable at the discretion of the Courts and triable by a Magistrate of the First Class. Maximum punishment as they are except transportation for life. Extra-marital offences—As it is.

18. *Vide* above.

19. No suggestion.

20. There should be no penal legislation.

21. Progress of social reform by means of social propaganda is far more desirable than penal legislation.



**Written Statement, dated the 13th August 1928, of Rai Bahadur  
A. N. DAS, Sub-Divisional Officer, Deoghar.**

I think that the most effective way to check rape in the marital state or premature parenthood is to penalise marriage before a girl is 14 or a boy is 18. For obvious reasons the trial of a rape case in the marital state is not a desirable alternative such a case hardly comes to Court.

1. There is dissatisfaction among a section of the so-called English-educated classes. This section, though small in numbers, is the most thoughtful section.

2. (1) There is rooted prejudice in the minds of the bulk of the Hindu public against interference by law in the consummation of marriage on the attainment of puberty.

(2) The health of the mother and the progeny and of the future welfare of the race clearly demand an advance.

3. (1) No.

(2) It is too early yet to judge. No facts have come to notice to show that any appreciable effect has been produced.

4. I doubt whether any effect has been produced. Hindu wives and parents do not come forward to complain.

The only way to make it effective is to penalise marriage before 14 years of age for a girl.

5. Girls attain puberty in this part of the country from about 12 to 14. This age differs in different castes, communities and classes of society. Among the rich aristocratic castes or classes it comes early. Among communities living an open outdoor life by the sweat of their brow it is delayed, *e.g.*, among the Santals it is 14 or 15.

6. (1) Not before puberty.

(2) Soon after puberty.

(3) Yes. If she attains puberty. These cases never come to Court.

7. Partly so. A husband who does not consummate marriage when his wife attains puberty is supposed to incur sin.

8. Yes. It is performed as soon as possible after the attainment of puberty.

9. No. In her 15th year or later according to the physical strength and health of the girl.

10. I believe it to be 17th, judging from the numerous allusions in Indian literature to a girl of 16 years (Shorashi), being a full-grown woman.

11. (1) A girl in her 18th year gave birth to a child from a husband in her 17th year. The child died. She again became a mother in her 15th year and was a woman of weak intellect for the rest of her life.

(2) The child of a girl in her 12th year had a defective palate.

(3) The first issue of a girl born just after she attained 13th year of age died in the 3rd month. She became a mother again in the next year and suffered from weak health for several years.

Instances can be multiplied in any numbers.

12. Most certainly.

13. Yes. It is confined to the thoughtful section of those who have received English education.

14. Yes, but they know not what they are doing.

15. None has come to notice but the difficulty is real. The best way is to introduce compulsory registration of dates of birth at the local Police Station or Municipality and to preserve these for 14 years.

16. Yes, because by this age most girls would attain puberty.

17. No, from the point of view of the future generations it is more important to protect a girl wife from her own husband. If a distinction is to

be drawn, I would make rape within the married state punishable with fine only because by making the husband a jail-bird and ruining his life, amount to punishing the innocent victim doubly because a Hindu marriage is an indissoluble tie.

18. All trials of offences within the marital state should be held in camera by the Court, only the legal advisers of the parties being allowed to attend.

19. I would not entertain any complaint of the offence within the marital state unless it is made by one actually aggrieved, *e.g.*, the girl or her guardian. It is undesirable and inexpedient to let any one else meddle in the matter. I would therefore add this offence to those mentioned in Section 198, Criminal Procedure Code.

20. (1) No, because it will rarely be resorted to whereas by penalising marriage below a minimum age the possibility of early motherhood will be discounted at the outset.

(2) The former, I fear.

21. I would personally prefer to rely on legislation as the latter mode of progress is likely to be very slow though it is undoubtedly better and more politic.

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**Written Statement, dated the 12th August 1928, of Mrs. N. SENAPATI, Secretary, Child Welfare Centre, Cuttack.**

1. There is dissatisfaction among women. They do not consider a wife of 18 to be fit to be a mother. As a first step, Age of Consent in the marital state should be raised to 14.

2. During the last year development of public opinion among women has made a great advance and there is every reason to think that women will continue to insist on more protection. It is therefore time to give married girls under 14 and unmarried girls under 16 the protection of the law.

3. Rape or seduction is not frequent in Bihar and Orissa.

4. In Orissa, except among Brahmins and few other castes, the majority of girls are married between the ages 14 and 20, and among Brahmins, married girls live with their parents till they attain puberty. In practice therefore cohabitation in the marital state does not commence till the first menses are over. The amendment of 1925 has had no effect in Orissa.

5. Girls attain puberty at the age of 12. Girls living in unhealthy surroundings, *e.g.*, congested cities, attain puberty at an early age.

6. Cohabitation is common among Brahmins soon after puberty. The girls are usually married between the ages 7 and 12 and as soon as they attain puberty they are sent to their husbands.

7. I have not heard of any religious injunction behind early marriages or early consummation of marriages. There is no customary penalty against late marriages. In fact, among kayasths in Orissa, girls are not married before they are 15.

8. The only ceremony performed among classes in which early marriage is prevalent, is what is called "re-marriage", *i.e.*, when the girl is sent for the first time to her husband, *i.e.*, after she attains puberty.

9. When girls attain puberty at the age of 12 and continue to grow physically till they are at least 16, it is obvious that they are not fit to be mother till their physical growth has reached its maximum. My experience in Bengal, Bihar and Orissa and United Provinces, tells me that girls in northern and eastern India cannot bear children before they are 16 without injury to their health or to their progeny.

10. It depends on the circumstances of her upbringing and education. In no circumstances can a girl give intelligent consent to cohabitation before she has attained the age of puberty. Even after attainment of puberty, I cannot think that a girl below 18 realises the consequences of cohabitation.

11. *Age*.—Married at the age of 11, became mother between 12 and 13, child died, but another child was born immediately after.

*Injury to mother*.—Mother had nervous breakdown, then another baby was born and she became insane and died after that.

*Injury to child*.—First baby died, second baby lived.

12. Early consummation of marriage even if not attended by maternity, cripples the intellectual progress of the girl. If attended by maternity, it ruins her in every way. Her physical development comes to a stop. Her energies which would make her a stronger mother in future, are divested to child bearing. The child of a weak mother is necessarily less fit to survive the struggle for existence.

13. There has been very little development of public opinion in consequence of the amendment of 1925.

14. Women realise that their daughters are not fit to be mothers before their physical growth has reached its maximum. A respectable purdanashin Brahmin lady complained bitterly to me about her daughters becoming mother early. The children die and the girls are physically wrecked.

15—16. I have no knowledge.

17. No answer.

18. Trials for rape should be in camera with a jury of women.

19. No answer.

20. Legislation fixing the minimum age for consummation of marriage will be most effective. As a first step it should be made an offence for parents or guardians to send their girls to their husbands before the age of 14. I think public opinion in Orissa will accept such legislation.

21. Legislation and social reform must proceed side by side. By propaganda and education, the evils of early consummation of marriage and early maternity should be brought to the notice of the people and gradually by stages, e.g., legislation every five years, the Age of Consent within or outside the marital state should be raised to 18.

### **Written Statement, dated the 13th August 1928, of the Senior Indian Judicial Officers of the Districts of Cuttack, Puri and Balasore.**

1. Sub-Judge.—*Nil*.

2nd Munsif, Cuttack.—*Nil*.

Munsif, Balasore.—He is not aware of any.

2nd Munsif, Puri.—Dissatisfaction in any active form against the Age of Consent does not exist. In spite of this law, people are following their course as usual. As both sides conspire, the matter cannot come to Court. Only in a rare case the law is sought to be enforced. Vaguely the public opinion then veers round in favour of the Law.

2. None for retaining the present age; but for making an advance.

Sub-Judge.—Considering the climatic condition of India, conservative nature of the people and the evil result of early marriage, the age of girls and boys should be fixed at 14 and 19 respectively.

2nd Munsif, Cuttack.—*Nil*.

Munsif, Balasore.—The law of the Age of Consent should be slightly modified and raised to 14 and 15 years.

2nd Munsif, Puri.—Is in favour of advance on the present law on the following grounds:—

- (1) Girls should not be treated as is done now as mere child-bearing machines.
- (2) They cannot get facilities for the development of their physical health like boys. Early marriage further undermines their health.
- (3) They cannot be properly educated or educated at all if married early. In every Indian Girls' School girls leave school at 12 in order to get themselves married and without education womanhood cannot be properly built.
- (4) Marriage is a sacred and legal tie. It cannot be easily broken.  
Girls are married before they have attained the age of discretion, which is cruel.
- (5) Girls are often sold indirectly to undesirable husbands. Their fates are sealed for ever. They suffer permanently for sins of others. One can suffer for one's own sins. But sins should not be forced on helpless girls.
- (6) There are customs where close relatives marry each other. Unless the age is increased for marriage, the child marriage of this class of people will not cease.

3. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

Munsif, Balasore.—He is not aware of the necessary facts and so is unable to give any opinion on the point.

2nd Munsif, Puri.—These crimes are not outwardly frequent but inwardly rife. These do not usually come to Court. In the majority of cases they are condoned if committed intercaste on payment of some fine and the pairs are allowed to live as husbands and wives. Often for losing the caste, those cases are concealed. When widows are seduced or raped they are often left unnoticed. In his opinion the increase of age to 14 did not materially change the position.

Judge's Office.—A statement showing the number of cases of rape and kidnapping from 1920-28 is given below, which will show that the crimes are not frequent.

	1920-25.	1926-28.
Rape (ଓ଼ି ଶ଼୍ଵ) I . . . . .	1	(age 10)
Kidnapping . . . . .	11	

4. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

Munsif, Balasore.—He is not aware of the necessary facts. So he cannot give any opinion.

Munsif, 2nd Court, Puri.—No, the public opinion is very weak even now. Law has no terror for them as both sides conspire and consummation takes place soon after puberty. The only remedy is to increase the marriageable age of the girl to 16.

5. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—Girls in this hot country generally attain puberty at the age of 11 to 13; but this age obviously differs in different castes and communities in view of their habits, mode of life, diet and environments.

Munsif, Balasore.—Girls attain puberty usually in the 13th and the 14th year that is to say after completing the 12th year and before completing the 14th year. Healthy girls if they are brought up luxuriantly even attain puberty before completing the 12th year. If they are sickly or poor it may be delayed. Age of puberty differs in different castes and communities. The

girls of higher castes (such as Brahmins, Kayastha and Karans) attain puberty earlier than those of lower castes.

Munsif, 2nd Court, Puri.—The usual age is 12 or 13. It does not materially differ in different castes or communities or classes.

6. Sub-Judge.—*Nil*.

2nd Munsif's Court, Cuttack.—Cohabitation is uncommon before puberty.

Munsif, Balasore.—(1) Cases of cohabitation before puberty occurred but not common. Are common in (2) and (3) but cases do not come to Court.

Munsif, 2nd Court, Puri.—(1) before puberty is exceptional.

(2) soon after puberty is the rule.

(3) before 13 is done with impunity. Usually the cases do not come to Court.

After the marriage the girl is left in her husband's home or permitted to move between that home and her parents' home. Cohabitation under any of the above circumstances cannot come to Court.

7. Sub-Judge.—*Nil*.

Munsif, 2nd Court, Cuttack.—*Nil*.

Munsif, Balasore.—He is not aware of any religious injunction directing early consummation of marriage before or at puberty but there is a practice among some classes of people sanctioned perhaps by social rules of the early consummation of marriage. A ceremony is performed whereby husbands and wives sleep together.

Munsif, 2nd Court, Puri.—No religious injunction governs early consummation. It is the pernicious custom of the people that governs it.

8. Sub-Judge.—*Nil*.

2nd Munsif, Cuttack.—Garbhadan ceremony is generally performed either a year or so after the girls' attainment of puberty.

Munsif, Balasore.—Yes among some classes. It is anterior to the consummation of marriage. It is generally performed a few months after the attainment of puberty.

Munsif, 2nd Court, Puri.—Yes it generally coincides with the consummation of marriage. It is generally done after puberty, but interval is very small.

8 & 9. Sub-Judge.—*Nil*.

Munsif, 2nd Court, Cuttack.—The mere attainment of puberty is not a sign of physical maturity justifying consummation of marriage and it is common experience that cohabitation before full physical development of the girl leads to the early break down of her health and the injury of her progeny and this physical development can be attained by the girl at an age not less than 16.

Munsif, Balasore.—The attainment of puberty is not always a sufficient indication of physical maturity to justify consummation of marriage. After a girl completes 14 years and at least 6 months after attaining puberty a girls' physical development may be considered to be enough to justify consummation.

Munsif, Puri.—No. After puberty there should be a gap of full three years to enable the girl to attain proper maturity. In that case the age limit should be imposed at 16 for the marriage.

10. Sub-Judge.—*Nil*.

2nd Munsif, Cuttack.—*Nil*.

Munsif, Balasore.—At the age of 14.

Munsif, Puri.—At 16. The usual atmosphere is that the girl should marry as early as possible. She should get time to see round and decide for herself and this she cannot do before 16.

11. Sub-Judge.—*Nil*.

2nd Munsif, Cuttack.—*Nil*.

**Munsif, Balasore.**—He is unable to give any specific instances but he has heard that cohabitation after puberty and before physical development of a girl has resulted in injury to her health and has prejudicially affected her progeny.

**Munsif, 2nd Court, Puri.**—He has no experience of cases before puberty. But cohabitation after puberty and before full development does take place, particularly where widowers marry young girls and these result in injury to the health of the girl-wife and her progeny.

He knows two specific cases where such cohabitation was done at an age of 11 of the girls. Often medicines are given to hasten puberty.

12. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—Yes.

2nd Munsif, Puri.—Yes, early consummation and early maternity are responsible for high maternal and infantile mortality. Also that led to intellectual and physical debility of the people. A girl-mother cannot take care of herself and her child effectively at all.

13. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—He is not aware of any.

**Munsif, 2nd Court, Puri.**—There is a change in the vision of the people that girls should marry late. But still blind custom rules them. What they profess in the public they do not practise in their lives.

14. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—No.

**Munsif, 2nd Court, Puri.**—Generally they do, as they cannot rise above the established custom and the husbands play into their hands and cannot resist.

15. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—He cannot give any sound suggestion as he does not deal with these offences.

**Munsif, 2nd Court, Puri.**—Yes difficulties do arise, this can be remedied by properly maintaining a register of birth. A column be opened in it for the name of the girl to be inserted when her name is given and this register be preserved for at least 20 years.

16. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—He thinks so.

2nd Munsif, Puri.—The difficulty can be remedied to a great extent by increasing the age limit of marriage to 16; but he would strongly recommend the maintenance of positive proof of age through the birth register.

17. Sub-Judge.—*Nil.*

2nd Munsif, Cuttack.—*Nil.*

**Munsif, Balasore.**—Marital and extra-marital offences should be separated. In case of marital offences the punishment should not exceed 6 months' simple imprisonment or with fine or with both. In the case of extra-marital offences, the punishment should be the same as already provided.

2nd Munsif, Puri.—Extra-marital and marital offences may be treated as different offences. In the latter case imprisonment in addition to fine should be imposed. Unless there is the fear of imprisonment the law will be disregarded. Two years' imprisonment and a fine of Rs. 1,000 should be the penalty.

18. Sub-Judge.—*Nil.*

Munsif, 2nd Court, Cuttack.—Nil.

Munsif, Balasore.—He does not deal with such cases.

2nd Munsif, Puri.—No difference in procedure need be adopted. The offence is the same and the offender should be subjected to the same procedure like the one under the other category. Any difference will lead to mis-interpretation and mis-calculation.

19. Sub-Judge.—Nil.

Munsif, 2nd Court, Cuttack.—Nil.

Munsif, Balasore.—He is not aware if there are any safeguards and so cannot suggest any beyond them.

2nd Munsif, Puri.—He cannot suggest any extra.

2nd Munsif, Cuttack.—Nil.

Munsif, Balasore.—He thinks legislation fixing the minimum age of marriage will be quite sufficient. Penal legislation may not be in consonance with public opinion.

2nd Munsif, Puri.—Penal legislation fixing the minimum age of marriage would be more effective. The other alternative would be welcomed by the other party as he can easily avoid it. But in view of the world force now operating the minimum age limit for marriage should be fixed and enforced.

21. Sub-Judge.—Nil.

2nd Munsif, Cuttack.—Says that the strengthening of the penal law is no panacea for the evil and relies upon free compulsory education of the people as well as upon the improvement of the material condition to gain the object in view.

Munsif, Balasore.—The object in view may be attained by social reform by means of education and social propaganda and a penal law in the matter is undesirable.

Munsif, Puri.—Reliance on the progress of social reform by means of education and social propaganda will lead to waste of time. The custom has such a force in this country that education did not greatly change the mentality of the people towards social reforms. They do jump easily for political reform and plead that social reform should wait till the political reform was achieved. Even the greatest political leader of the country has fallen into this error. Therefore this reform can be achieved only by the strengthening of the penal law.

The Sub-Judge has said that the proper age for the marriage of girls should be higher by 2 years but such sudden increase is not likely to be welcomed by the people. He thinks that the word 14 years in Section 375, clause fifthly should be changed to 16 years and the word 13 years in the exception should be changed into 14 years. Similarly the word 12 years in Section 376 should be changed to 13 years. He further says that so far as Mohammedan families are concerned there is no practice of early marriage. Girls are generally married at the age of 16 and boys at 20 or 21; but there may be few exceptions.

### Written Statement, dated the 15th August 1982, of Mr. P. MEERZA, Magistrate and Collector, Gaya.

1. I do not think there is much dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376, Indian Penal Code. People generally are indifferent as regards the scope and uses of the Age of Consent provisions and most men do not even know what they are. The absence of dissatisfaction is not due to the law being perfect but because of the belief that change in the law goes a very small way to minimise cases of sexual connection at an early age. Education, the creation of public opinion and securing to females of a stronger position in the home and society are the true remedies.

2. The Age of Consent, as it at present stands, should be advanced. At the age of 14 girls have not sufficiently developed physically to bear children. This is obvious from the high rate of infantile mortality which the last census returns showed was in some places as high as 400 per thousand. Advancement of law, moreover, should help, however slowly, to excite public opinion among the educated classes and teach by punishing cases brought to light.

3. The crime of rape is not, I think, frequent in this part of the country. That of seduction is, I am inclined to believe, frequent but does not often come to light. The amendment of the law made in 1925 has made no appreciable improvement in the situation. Raising the Age of Consent by one year only was altogether ineffective. The age should be raised to 18 years for cases outside the marital state.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has not protected married girls against cohabitation with husbands within the prescribed age limit in any of the three ways mentioned in the question. If the law is to be effective in affording protection the minimum age for marriage of girls will have to be fixed by legislation. Such legislation may not by itself prevent early marriage of girls but it will go a long way towards attaining that object and indirectly in checking early cohabitation within the marital state.

5. The usual age at which girls attain puberty is between 12 and 14 years. I cannot say whether the age differs in different castes, communities or classes of societies. I am inclined to think though that girls of the labouring classes attain it later than others.

6. Cohabitation before puberty is not common. Soon after puberty it is not uncommon. Cohabitation before the girl reaches the age of 13 years is, I think, rare. Such cases, if within the marital state, for obvious reasons never come to Court. Outside the marital state also they seldom see the light of day.

7. I do not know of any religious injunction for the early consummation of marriage before or at puberty. I am informed that a Sanskrit verse used at one time to be occasionally repeated by Brahmins meaning that a girl whose consummation of marriage takes place between the age of 8 and 10 will rank with Parvati herself in the nuptial galleries but that such savings are in these days of comparatively advanced social ideas discarded. I cannot quote the authority.

8. *Gaona* is prevalent in Bihar. Usually the ceremony is performed some years after marriage and some time after the girl has attained puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage but is commonly believed to be so which is the root of the evil of sexual connection before the full physical development of the girl. The second part of this question regarding the age at which the consummation would be justified is one that a medical man might properly answer. I would suggest an age not lower than 16 and not before 3 to 4 years after puberty.

10. The age would depend on the degree of education and the intelligence of the girl. In any case I do not think she would be competent to give an intelligent consent with due realisation of consequences before the age of 18.

11. I have come across some cases of both kinds but cannot at the moment recall details. It is well known though that such cases are common.

12. I have no doubt that early consummation of marriage and early maternity are mainly responsible for maternal and infantile mortality.

13. Public opinion has not made itself strongly felt in this direction. It does not gather itself on the question of legislation probably because the law does not effectively stand in any body's way. But opinion is entertained individually and is strong on the question. No right-minded man wants to see early consummation of marriage prevalent in society. Every one with



intelligence feels that it is eating into the vitals of the people and will welcome recognition by society as a whole that sexual cohabitation before—say 16 or 3 to 4 years after puberty—is a sin.

14. No. Not now-a-days.

15. No serious difficulties are experienced in determining the age of girls in connection with the offences under Sections 375 and 376 of the Indian Penal Code. Strong enforcement of the registration of births throughout the country would remove any difficulty that may exist in this connection.

16. The raising of the age of consent to 16 years will minimise the margin of error in determining the age.

17. I do not think any separation into different offences is necessary. Section 376, I. P. C., does not impose any minimum sentence and it is always open to a court to impose a smaller sentence in the case of marital offences.

18. No difference in the procedure seems necessary.

19. I have no suggestion to make.

20. Fixing the minimum age of marriage would, I think, be more effective and in consonance with public opinion in this part of the country.

21. The object in view would be best secured by the progress of social reform by means of education and propaganda. At the same time I would have a strong law side by side.

**Written Statement, dated the 14h August 1928, of Babu NANDLAL SINHA, M.A., B.L., Sadar Sub-Divisional Officer, Balasore.**

1. There is no felling either for or against the existing law. The law is not widely known. In marital relations cohabitation does not ordinarily take place before the wife attains the age of 13 years. Where such cohabitation does take place in rare cases and the law is known, legislative interference in intimate personal relations of an extremely delicate nature is resented. Outside marital relations the public do not appreciate the age limit fixed by law. They fail to understand why unlicensed (i.e., immoral) cohabitation should be allowed at any age.

2. The question is answered above. It will also appear below why an advance on the present law is not called for in marital relations. Outside marital relations sexual intercourse by a stranger with a woman at any age should be altogether prohibited unless the woman is a declared public prostitute. Such intercourse invariably results in the excommunication of the woman and her illegitimate children as well as of her father's and husband's families. It disintegrates society and brings into existence a race of unfortunate bastards who are a source of trouble and a menace to the society.

3. Crimes of rape and seduction are frequent in this part of the country. The amendment of the law has had little effect on the prevalence of these crimes. Outside the marital state, except in the case of public prostitutes, sexual intercourse by a stranger with a woman at any age should be penalised, and the woman also should be punished as an abettor or as the principal offender as the case may be. The present law (Section 497, I. P. C.) makes an exception in favour of the woman; but the Indian Society does not spare her. In my opinion the verdict of the society is right. Similarly, the words "without the consent or connivance of that man" should be expunged from Section 497, Indian Penal Code, or retained only in the case of certain classes of the Indian community. In other words, the law of adultery should be brought into line with Hindu ideas on the subject, so far at any rate as the Hindus are concerned.

4. The law as amended in 1925 has had no such effect. It did not introduce any material change in the state of affairs existing in this part of the country. Vide answers 5 and 6 below.

5. In this part of the country girls attain puberty at the age of 12 to 13 years, and rarely at the age of 14, irrespective of caste, community or class.

6. (1) Cohabitation before puberty is practically unknown.

(2) Brahmanas and Rajus marry their daughters before puberty, and Khandaits and Karaus, after puberty. Brahmanas perform the "second marriage" of their daughters within a month after they attain puberty; Rajus, after a longer interval. Cohabitation takes place after puberty. First conception is timed according to astrology which causes delay more or less.

(3) It would follow from the above that cohabitation takes place in some cases before the girl completes 13 years. Such cases are very rare, and never come to Court.

7. Consummation of marriage soon after puberty is sanctioned by custom and usage. Such custom and usage seem to be a misunderstood and mutilated relic of the injunctions in the codes of law. Reference may be made to Manu-Samhita, Chapter III, verse 45: "Ritu-kalabhigami syat, etc.", where Medhatithi and Kulluka discuss and interpret the directions of the Grihyakaras and of Parasara.

8. *Vide* answer 6 above. Where marriage takes place before puberty, a "second marriage" is performed after puberty. "Garbhadhana" or the sacrament of conception is not separately performed. "Gaona" or "Dviragamana", the girl's formally coming to live with the husband, takes place after puberty and generally within a year of marriage. "Garbhadhana" is the consummation of marriage. It takes place after puberty.

9. Attainment of puberty is ordinarily a sufficient indication of physical maturity. That is nature's law. The latest medical opinion on the subject is quoted below from "Organotherapy in General Practice" published by G. W. Carrick Co. of New York City: "At the Age of Puberty the interstitial cells reach their highest stage of development and the most striking changes take place as a result of their activity. The mammae enlarge and develop, the voice and contour of the body change, menstruation and ovulation are established, the uterus increases greatly in size and the immature girl, who has not greatly differed from a boy of similar age, becomes transformed into the woman. Along with these physical changes, there arises a marked difference in the psychic characteristics" (page 141). "In normal physiology menstruation makes its appearance at the beginning of the period of sexual maturity. In temperate climates, with exceptions for individual and racial variations, this maturity is reached at about the age of fourteen or fifteen years, and menstruation continues as a periodic phenomenon until the time of the menopause—usually from forty-five to fifty years of age" (page 168). India lies half in the temperate and half in the torrid zone. Maturity at an earlier age is the rule here. But this would not in my opinion justify immediate consummation of marriage. For normal physiology among Indian girls is a rare phenomenon. Poverty, insanitation, want of nourishment, idleness, ignorance and many other causes stand in the way of their full healthy growth. Menstruation in such circumstances is a tragic phenomenon brought about by the inexorable law of nature and in the majority of cases by no means indicates fitness for maternity. The above adverse circumstances do not affect young girls alone but adult women as well. And the latter equally with the former are in many cases unfit to bear children. It is therefore not a question of fixing an age for the consummation of marriage but of finding means for the amelioration of the economic condition of the people and for the uplift of the womanhood of India. If an age for the consummation of marriage has to be fixed, this has already been done by Susruta, I think, who has declared that a girl should not bear child before she is 16 years of age.

10. The Hindu ideal was that children should come by choice. But in these days they come by chance. Very few parents stop to realise the consequences of their acts. The question of consent does not arise. On the other

hand, in a joint Hindu family a child is not the care of the parents alone but of the family as a whole. It is the duty of a son to present a successor to the family to carry on the traditions and to improve them.

11. I have not come across any such case.

12. I do not consider early consummation and early maternity responsible for high maternal and infantile mortality. Early consummation and early maternity seldom occur. I attribute it to procreation by physical defectives both male and female, and to the causes enumerated in answer to question 9 above, I would add, too rapid or frequent conceptions.

13. There has been no such development.

14. Neither women nor men favour unfit consummation of marriage for their children.

15. Cases involving age on the border line have not come to my notice.

16. I do not think that 14 in place of 13 would make any appreciable difference. The line of demarcation is very thin indeed.

17. The present punishment provided for extra-marital offences seems adequate. I would not advise reduction. To talk of "rape" in marital life is repulsive. "Illicit married intercourse" involves a contradiction in terms. It would be more appropriate to call it unlawful, because the law prohibits it. Marital offences should be treated separately from extra-marital offences. But they should not be given a bad name; as that would alienate public opinion. It would moreover be futile to create a new offence. No Hindu wife or her parents would complain against the husband for simple cohabitation at the prohibited age unless serious hurt were caused. And where such hurt is caused, Sections 336, 337 and 388, Indian Penal Code, provide sufficient punishment for the offender.

18. The fear of publicity and of the social consequences following therefrom as well as the sentiments of shame and modesty are responsible for many of such cases not coming before the Courts at all. I would suggest that in extra-marital cases the examination of the girl or woman at any rate, and that the trial of all marital offences, should be held in camera.

19. Against collusion to protect the offender, the law should not offend the sense of the community but should be such as the people can feel and adopt as their own: *vide* also answers 17 and 18 above. Against improper prosecution or extortion or harassment, I would suggest that marital offences should not be cognizable by police officers below the rank of an inspector. I would prefer that in such cases coming to the notice of the police a report without investigation should be forwarded to the magistrate having jurisdiction and that the latter should investigate the case himself or through a subordinate magistrate.

20. I do not think that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than at present. The reasons have been indicated above. Legislation fixing the minimum age of marriage is likely to be less objectionable. But such legislation is uncalled for. Public opinion already exists against early marriage and early maternity. Economic causes and the general awakening of the people are steadily working towards raising the age of marriage and maternity. On the other hand, such legislation may introduce difficulties all of which may not be foreseen and which it may not be easy to remove. For instance, there are orphan and helpless girls. Marriage will provide them with a home and with protection and maintenance. Legislation fixing a minimum age of marriage will make their lot worse.

21. I would prefer to rely on the progress of social reform by means of education and economic regeneration. In the normal human being there is always a fund of natural wisdom and good sense. People are not so perverted as to allow early marriage and early maternity as a matter of morbid choice. In many cases, particularly among well-to-do and up-to-date classes,

these evils are contracted through sheer thoughtlessness and want of healthy occupations and outlook. But in the majority of cases they are the results of causes over which the people have little control. The root causes of infantile and maternal mortality are in my opinion poverty, insanitation, ignorance and too frequent confinements, and these causes affect young girls as well as adult women of all ages.

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**Written Statement, dated the 13th August 1928, of Mr. R. K. GHOSE, District Judge, Purnea.**

1. No.

2. There would be no better result by any change in the present law.

3. The crimes of seduction and rape are not so frequent in this part of the country. The amendment of the law made in 1925 raising the Age of Consent to 14 years has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girl for immoral purposes. I do not think any legal measure would be of substantial help to eradicate these social evils, unless the people themselves make improvement in this direction by social reform. Spread of education by making primary education compulsory can only bring about social reform.

4. I do not think it has been effective. No legal steps are necessary nor would I advocate interference of law in purely social and religious matters. It can be made effective only by reforms and training up young generations and spread of education. No amount of legislation can bring a case of husband and wife to law courts. If any case is at all brought it is sometimes false due to enmity of neighbours. The legislation is deserved in its breach.

5. The usual age at which girls attain puberty in this part of the country is 12 years. It differs in different castes, communities and classes of society. The girls who are highly developed in body get puberty at the age of 12 generally, especially amongst girls in families who are above wants.

6. Cohabitation is not common in this part of the country among any class of people before puberty, but cases are frequent of cohabitation soon after puberty. Cases of cohabitation are not so frequent before the girl completes 13 years. These cases do not come to court.

7. I do not attribute the practice of consummation of marriage before or at puberty, wherever it exists, to religious injunction.

8. *Gaona* and *Grabhadhan* ceremony is usually performed in this part of the country. It does not coincide with nor is it anterior to the consummation of marriage. It is performed generally after the attainment of puberty in higher classes, but in low class people, *Gaona* ceremony is performed mostly after the attainment of puberty.

9. Yes. I would consider the attainment of puberty to be a sufficient indication of physical maturity to justify consummation of marriage for the purpose of making legislation. Otherwise there will be immense difficulty. In the first place, marriage amongst Hindus is a religious bond and not a mere contract. I would not allow law to interfere or penalise. Even if law is allowed to interfere, there must be safety of citizens. In the next place, who would be experts to give opinions as regards age or physical maturity? Surely some medical men. But their opinions would differ. It is not safe to take away liberty of a British subject upon opinions which might differ.

10. 14 to 15 years.

11. During my experience, I have come across cases in which cohabitation before puberty or after puberty but before full physical development of girls resulted in injury to their healths and bodies and prejudicially affected.

their progeny. In one case a girl aged about 9 years was ravished by a man aged 32 years. The girl appeared to be consenting before ravishment. The internal injuries were so serious that even some six months after the occurrence, the girl could not walk and was incapacitated. In a number of cases of sexual connection soon after puberty I saw issues of the connection quite lean and thin and dying premature deaths and the girl suffering throughout.

12. Yes.

13. There has been some further development of public opinion amongst the few educated people in this part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of law in 1925. It is not general. I therefore advocate spread of education to eradicate the evil and thereby to train public opinion instead of recourse to legislation the object of which is not understood.

14. Women in this part of the country generally have got no independent opinion of their own as regards consummation of marriage of their children. In certain classes where women have got independent opinion of their own they do not favour early consummation of marriage for their children. I would propose that opinions of educated ladies may be consulted who can give some independent opinions.

15. Difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. Cases of births with full particulars should be registered at each Thana and the register preserved for 20 years. Now the system is to depend upon medical opinion which I have found to be sometimes very misleading. For a conviction under Section 376, Indian Penal Code, courts should not depend upon such opinion.

16. My proposal, therefore, is to keep the law as it now stands.

17. I would separate extra-marital and marital offences into different offences. As regards extra-marital offences I think a punishment of 2 years' imprisonment and fine up to Rs. 500 according to the circumstances of each case would be sufficient. As regards marital offences—the amount of maximum punishment may be limited to a fine only not exceeding Rs. 1,000 according to the circumstances of each case.

18. I do not think any change in the procedure necessary except that in marital offences it should be compoundable.

19. Not necessary.

20. Legislation fixing the minimum age of marriage is likely to be effective only in extra-marital cases. Marital offences in well-to-do families or obscene families would generally never come to court unless the offender happens to incur displeasure of his neighbour.

21. I think the progress of social reform by means of education and social propaganda would, in due course of time, do away with all these social evils --spread of education appears to my mind to be the sole remedy.

**Written Statement, dated the 14th August 1928, of Mr. P. THAKUR,  
Deputy Magistrate, Motihari, District Champaran.**

1. The masses being illiterate. The law on the subject is hardly known to them and as such it cannot be said that there is dissatisfaction amongst them with the law proper. But the enlightened people, especially those who to deal with law as their professions and who have occasions to mix with them or frequently visit law courts, do, on occasions, express dissatisfaction with the present state of the law, chiefly for the reason that under the present law, a girl of 14 years of age or above is regarded competent to understand the

consequences of sexual intercourse with one who is not her husband, which in their mind seems undesirable, being out of keeping with the general standard of intelligence of the Indian girls. As cases of rape by husbands are few and far between, people do not seem to have taxed their brains on it so much.

2. In my opinion, there is no justification for retaining the law as it is. An advance on the lines likely to bring both the utmost good to community should be made. In extra-marital cases, it is not sound to trust girls of 14 or above in the very responsible duty of giving consent to sexual intercourse with one who is not her husband. It has to be borne in mind that the psychology of an outsider while having intercourse with a girl is not the same as that of a husband. The former bears no duties towards her, while the latter bears and to some extent appreciates them. The latter has feelings for her woes and knows that ultimately he has to shoulder the ill consequences that may follow from an improper sexual intercourse.

The general limit of understanding too is low among the girls in this country.

In marital cases, an advance in age will have some, though not much, restraining effect upon the husbands. I say, some, because such cases, if they happen at all, are concealed with the utmost care by the parents and near relatives of the couple. Nevertheless an advance is desirable, in the interest of the parties and in the long run of the community at large.

3. Crimes of seduction or rape are not frequent in my part, although such crimes do occur. The amendment of 1925 is hardly known to the people and therefore it cannot be said that it has tended to improve conditions. In order that the law prove effective, it is highly essential that:—

- (1) Police officers should be given special instructions to bring as many cases of such crimes to court as practicable and to give them rewards, in cases ending in conviction.
- (2) Similarly chaukidars be instructed and rewards promised to them. In cases where they have colluded with the parties or a party they should be given exemplary punishment.
- (3) Informants be appointed in each circle of the Thana and rewards given to them when there is conviction.
- (4) Trying Magistrate be directed to award adequate compensation to the complainant.

4. I don't think so, there is nevertheless a strong tendency especially in the educated class, to raise the age of marriage and thereby push up the consummation of marriage. In many cases marriages after 13 too have taken place but this reform has absolutely no connection whatsoever with the amendment of 1925. It has come with the general awakening and the spread of education, as also an appreciation of the ill consequences of an early making. To make the law effective it is necessary that:—

- (1) It (the law) be made widely known to the people by the distribution of hand bills by Municipalities and the District Boards (in the interest of the general health of the community).
- (2) Public institutions seeking to introduce social reforms, be requested to make it a subject of their platform.
- (3) Government Bureau, wherever they exist, may also publish pamphlets and hand bills on the subject and get them widely circulated through the Police and Chaukidars.

5. In well-to-do and middle class people of practically all castes the usual age at which girls attain puberty is 13. In low classes, specially in villages, where there is little of temptations, as are found in most of the towns, the usual age is nearly 14. It has to be remembered, that puberty is influenced

not only by good feeding and climatic condition, but very largely by the social environments in which girls live.

#### 6. Cohabitation :—

- (1) is rare before puberty;
- (2) is common after puberty;
- (3) is rare in respectable classes, but not uncommon among prostitutes.

All these cases come to courts at times but not frequently. Dearth of such cases in courts is due chiefly to the anxiety on the part of the parents to keep them concealed for fear of communal troubles and out of a mistaken sense of respectability.

7. If consummation of marriage means the actual meeting, which I take to be its meaning, then to the best of my knowledge I do not know of any religious injunction to which the early consummation before or at puberty may be attributed. But I know of a text by which the performance of marriage before puberty is strictly enjoined on the Hindu parents. This text is a Sloka, probably attributed to Manu and begins with "Ashta barshe bhavet gauri.....". The custom of marriage before puberty so widely prevalent among the Hindus, especially among the high class, appears to be at least partially based on the text. The punishment prescribed for its breach is most probably the Hell for the parents.

8. Gaona is a usual ceremony in many parts of the country though it is much less common among the Bhumihaar Brahmins whose girls are married generally after puberty. Generally it precedes the consummation of marriage but in some countries, *e.g.*, among the Maithil Brahmins, it comes after the consummation of marriage the interval varying from one to five years. It is generally performed after the attainment of puberty. Sometimes just after and sometimes in a year and sometimes longer even. The times of Gaona, in our part, is generally calculated from the date of the marriage and not from the time of the puberty.

9. I have observed above that puberty is the result of many influences. It does not depend entirely on the physical strength of the girl. Girls of very tender age have been seen to have menses. I do not therefore consider that the attainment of puberty is a sure criterion of a girl's physical maturity to justify consummation. In the well-to-do and middle class people, where the common age for the attainment of puberty is 13, 14 and upwards, may be taken to be the ages for the consummation of marriage. In the lower classes, who enjoy more of pure air and are accustomed to menial labour, consummation, just after the attainment of puberty, may not be harmful; in other words, for girls of these classes, too, 14 may be the appropriate age for the consummation of marriage.

10. 15 to 16, I think, is the lowest age at which girls in Indians can be expected to give an intelligent consent to cohabitation. Educated girls naturally more easily realize the consequences of untimely cohabitation than the illiterate ones.

11. I have come across some such cases. I may give details of one of these cases here.

Marriage of the girl took place at the age of 10. It was followed by consummation of marriage. Puberty came about at the age of 11. The girl gave birth to a child at the age of 12. This was a dead child. The mother was somehow saved. Another child was born at the age of 14. This child died at the age of 2 years. Another child was born between 15 and 16. This issue died at the age of 4 years. Another child was born at the age of 18. This child is now 2 years old and is very sickly.

12. Yes, but there are other causes too leading to high maternal and infantile mortality. Ignorance of the rules of hygiene, improper nursing during child-birth, want of nutritious food, and so forth are as potent causes as early consummation. But the early consummation is the root cause of such high percentage of mortality. It vitally affects the physical growth of the girl. She is too weak to stand the drain on physique in consequence of

the child-birth. Children born from some mothers are weak and if they live at all, they inherit feeble health, which acts adversely on their progeny. In this manner, the physical deterioration of the nation is brought about. With bad physis, high intellectual attainment is impossible. Also girls who become mothers at an early age, have to divert their attention from studies, and concentrate it on the children. Husbands too are affected adversely in the same manner, though not to that extent. Anxiety for the good health of weak children distracts the attention of the father and he cannot prosecute his studies efficiently. In some cases he has to give them up altogether.

13. No. For the attainment is hardly known to any class of people, except the professional lawyers and judges those who have occasion to mix with them or visit law courts. On occasions such men express their disapprobation of the existing law. There has been no organised development of public opinion in favour of a extension of the Age of Consent.

14. Yes. The reason for such an anxiety on the part of the women is their illiteracy and want of due realization of the evil consequences of the untimely cohabitation.

15. Courts have fully relied upon the testimony of Doctors, although it cannot be said that the science on the subject is yet perfect. If birth registers for girls are preserved for 18 to 20 years, chances for errors will be almost *nil*. But certainly it is a gigantic affair and it is doubtful, if money spent on such a project, will be equally fruitful in its results. Little importance can be attached to horoscopes, when they are available, as they can at any time be got up for a few rupees.

16. Yes. I think that the difficulty or margin of error in determining the age is greater at lower age than at higher age. If the Age of Consent be raised to 16, this difficulty and margin of errors will be minimised appreciably.

17. I do not quite appreciate this question. In Dr. Gour's Bill, two offences have been mentioned. The first is the rape, and the second, the illicit married intercourse, made punishable by Sections 376 and 376A, respectively. But "rape" as defined, is both marital and extra-marital. If the wife happens to be under 13 years of age, sexual intercourse with her by the husband is also rape within the existing definition. If this provision is taken off from the definition of rape and added to illicit married intercourse and different punishments, prescribed for cohabitation with a wife below 13 years of age and for those that are between 13 and 14 years age too separate offences may come into being and I would have no objection to such a separation. The punishment prescribed for and mentioned for extra-marital offences, the Dr. Gour's Bill should remain and some adequate.

18. In this connection I would only like that offence under Section 376A should be triable by the Presidency Magistrate or a First Class Magistrate so empowered by the District Magistrate or the Local Government. This provision is meant to obviate the chance of such case being transferred to inexperienced first class Magistrate.

19. I think that to prevent improper prosecutions, local enquiry by a Magistrate of second class or higher powers, be held, before issuing summonses.

20. No. I strongly think that in view of the strong public opinion in the country in favour of an advance in the age of marriage, and considering that the prescribing of a minimum age for marriage would do away with the necessity of a penal provision for marital illicit intercourse, which would not then exist, an advance in the age of marriage along the lines of Mr. Sarda's Bill, is highly necessary and called forth. We shall then be left to deal with cases of extra-marital offences, which will greatly simplify matters. There is a general tendency on the part of well meaning fathers, these days to marry their children at higher ages than it was a decade or two before. Otherwise people may resent such an enactment, but it is bound to bear good results.

21. I think both measures are necessary to secure the end in view, neither of them can be left alone, to work out the desired end.



In the end, I should like to explain again, even at the risk of reputation, that Mr. Sarda's Bill is likely to do much the greater service to the Indians than Dr. Gaur's. Mr. Sarda's Bill touches the very root, while Dr. Gaur's does not. In this connection it is also to be borne in mind that Dr. Gaur's Bill furnishes the young husband also, who is not expected to have that sense of responsibility, as parents, who at the age when they marry their children can exercise better sense, possess greater experience and can bring to have on the matter the calculation of calmer heads, than the young husbands.

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**Written Statement, dated the 14th August 1928, of Rai Bahadur KSHITISH CHANDRA SARKAR, Additional Deputy Commissioner, Singhbhum.**

1. No. This is owing to the ignorance of the people as well as to want of any formulated public opinion. There has also not elapsed sufficient time after the amendment of 1925 to ascertain what effect the said amendment has produced.

2. I would fix the Age of Consent at 15 within marital relationship and at 16 outside it, with a view to ensure the health of the girl and of her progeny, and also her maturity of understanding when she gives her consent to the cohabitation.

3. Crimes of seduction or rape are not frequent in the district of Palamau, as young girls of low castes, especially the Kahar caste, are freely available for purposes of sexual intercourse. In the Palamau Gazetteer it has been stated that a Kahar father, who has one young daughter works only half a day, and one having two such daughters, not at all.

The amendment of 1925 has not been in force sufficiently long enough to enable one to judge whether the raising of the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. Besides, as stated above, these offences are not at all frequent in the district of Palamau.

4. The amendment of 1925 does not appear to have been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit either (1) by postponing the consummation of marriage, or (2) by stimulating public opinion in that direction, or (3) by putting off marriage beyond 13. The people are extremely ignorant and conservative. The majority are hardly aware of the amendment at all. Then also such cases are rarely brought to Court, as the girl-wife is absolutely helpless in her husband's house, and must submit to whatever the husband chooses to do towards her. The only remedy is to penalise child marriages on the lines suggested in Mr. Sarda's Bill, and to bring the law to the knowledge of the general public by beat of drum, etc. A mere publication in the official gazette is of very little use.

5. The usual age at which girls attain puberty is between 13 and 14. This does not differ in different castes, communities or classes of society; but it depends on conditions of living. Girls who are well fed attain puberty earlier than those living in a state of poverty.

6. Cohabitation before puberty is not common. It prevails to a certain extent among the lower classes, among whom it means money to the parents. It is common among all classes soon after a girl attains puberty. A girl generally does not attain puberty before completing 13 years of age. So, cohabitation before 13 is not common except amongst the lower classes, as stated above. Some of these cases do come to Court, but not very frequently.

7. The practice of the early consummation of marriage at puberty had no doubt its origin in religious injunctions which prescribe (I forget the name of the authority: probably it is "Manu Samhita") that a husband, if present, must cohabit with the wife on the 4th day of the menses. This is called

"ritu-raksha" or "honouring the menstruation". A husband incurs sin if he fails to perform "ritu-raksha" when he is physically able to do so, as his failure is considered as equivalent to "bhruna-hatya" (i.e., killing of the embryo in the womb). The Shastras never enjoin cohabitation before the first menstruation. In the present rationalistic age, however, the people care very little for the Shastric injunctions, and the consummation of marriage before or at puberty is solely due to incontinence on the part of the husband.

8. The "Gaona" ceremony is usually performed. It generally coincides with the consummation of marriage. It is generally performed immediately after the attainment of puberty, but sometimes even before.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I should think that 2 complete years should pass since the first menstruation before a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. I am of opinion that a girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences at the age of 16.

11. I have not come across any case in which cohabitation before puberty, or after puberty, but before full physical development of a girl resulted in injury to her health or body, or prejudicially affected her progeny.

12. Yes. Early consummation of marriage and early maturity must lead to a breakdown in the health of the girl, and to the poor physique of her progeny.

13. No.

14. The prospective mothers are not quite in favour of early consummation of marriage for getting babies, but the grandmothers are often anxious to "see the grandchildren on their knees before they die".

15. Yes. Ordinary medical opinion as to age is not often correct. Medical opinion based on X-Ray examination gives accurate results within a reasonable degree, and should be obtained in all cases under Section 376, Indian Penal Code.

16. Yes. To a certain extent.

17. Yes. I would retain the distinction now existing in the Indian Penal Code, as also the existing punishments in the Indian Penal Code.

18. No, except that trials in marital cases may be held *in camera*.

19. As stated above, cases of rape by husbands on their wives will rarely come to Court, and the only way to save young girls from the lust of their husbands would be to penalise child marriage as stated above. There is not much of either improper prosecution or extortion.

20. No, for reasons stated above. The latter alternative, namely, legislation fixing the minimum age of marriage would be in consonance with public opinion.

21. I would rely on both, preferably the former. The Indian society is too inert to take the initiative in any matter of social reform, but its members are law-abiding, and will in the end loyally obey the law, although there might be a little (mostly engineered) outcry at the beginning in consequence of the innate conservatism of the people.

**Written Statement, dated the 16th August 1928, of Mr. UMA KANTA PRASAD, Member, District Board, Palamau.**

The paper concerning "Age of Consent" reached me so late that I think it would be useless to give any opinion over the matter. However, if it would be of any use, I want to deal shortly with one or two questions below:—

21. I would rely on the progress of social reform and by means of education and social propaganda in order to secure the object in view. Any strengthening of the penal law seems to be fruitless, at least, in this part of the country. The thing is that the majority of the population of the District consists of persons who are illiterate having no idea of age. If any penal law is made in order to stop early marriages, the result will be that persons though not intentionally marrying, may fall into the clutches of the law. Majority of the persons have no idea as to what and when they attain 12 years, 13 years or 14 years of age. This is not all, they do not know even when they attain 20, 30 or 40 years of age. It is not a fact that they are liable to care slightly in determining their ages. In some cases they are at difficulty to determine if their age is 8 or 12 years.

The above difficulty can only be removed by means of education and social propaganda. Unless they are familiarised with the idea of age and they realise the defects and troubles in early marriage, any penal law will not achieve the desired effect. What the social reform will do for the object in view in 5 years, the penal law will do at least after 10 years. There are few persons in this part of the district who will understand the gravity of the penal law but it is also useless for them, because early marriage is already being avoided by them.

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**Written Statement, dated the 17th August 1928, of Rai Bahadur A. N. MITTER, M.A., B.L., District and Sessions Judge of Manbhum, Sambalpur.**

1. I am not aware there is any dissatisfaction.

2. The Age of Consent should, in my opinion, be 16 but in the case of a wife having intercourse with her husband I would retain the present law for the only evil result that may arise is pregnancy. I think Mr. Sarda's Bill may be depended upon to effectively raise it to 14. Different considerations arise in the case of an intercourse between a man and a girl outside marital state. A girl under 16 must be protected from seduction at a time when she is too young to understand the consequences of her lapse from the path of virtue. I am in favour of a change only in this respect.

3. Cases of seduction and rape are not frequent in this district. It is difficult to judge if the amendment of 1925 has had any appreciable effect here during these three years. In fact the change in the law is not yet known to the majority of the people. It is only in cases of rape or of illicit marital intercourse leading to untoward results that the question of age comes in for consideration. Their number must be very few compared to that of instances of actual breach which never see the light of the day.

4. I do not think that the raising of the Age of Consent within the marital state to 13 by legislation has had any effect of the nature mentioned in the question. The conditions are the same as before. I am unable to say that marriage is not consummated before the girl has attained puberty. Among the middle classes the age for marrying girls has gradually risen on account of other causes. Legislation on the lines of Mr. Sarda's Bill would be very effective.

5. Girls attain puberty generally at 12 to 14 according to habits of life and constitution.

6. Cohabitation is common amongst all classes of people excepting the classes holding advanced views, soon after and sometimes even before puberty.

Such cases rarely come to Court. Recently in a sessions case of rape on a married girl of the Sarak caste of the age of 12 or 13 years, the girl admitted in her evidence in Court that she used to have sexual intercourse with her husband even before menstruation.

7. There is no religious injunction for consummation of marriage before menstruation although some old-fashioned people still think it necessary upon

attainment of puberty. That is the idea at the root of early marriage. There is custom of valid retirement in Bengal as soon as the marriage is celebrated and to this marital intercourse before puberty is due.

8. *Gaona* locally known as *Dwiragaman* is generally performed in this part of the country. It is generally performed as soon as practicable after the attainment of puberty by the girls.

9. Attainment of puberty is not always a sign of physical maturity for bearing child. It cannot be denied that in India girls gain precocious knowledge of sexual matters sometimes even before attainment of puberty. This is one of the reasons for early menstruation. Consummation of marriage should be postponed till the girl is at least 14 and preferably 16 in the interest of her health and that of the child.

10. A girl in India can give an intelligent consent to cohabitation with a knowledge of the consequences between 14 and 16 according to her mental capacity, environments and mode of life.

11. I have not come across any such case.

12. That may be one of the causes. I should consider bad food, poverty and unhealthy surroundings as more responsible. It is noteworthy that women of the older generation who went through early consummation and early maternity and their children were much stronger than those of the present generation though the age of consummation and maternity has risen.

13. No.

14. Old women favour such early consummation of marriage. There has been an improvement in this respect in the minds of younger women.

15. Determination of the age of girls has been a matter of great difficulty in cases relating to offences under sections 375 and 376 and other offences where the question is material. Ordinary people in this district have no idea of their own age and the evidence of parents is generally of vague and general character. The Courts have to rely considerably on medical opinion which is uncertain between 13 and 18 and is practically useless in cases where the age of the girl is on the border line.

The registration of births and deaths may be placed on a more satisfactory basis and the registers kept for a sufficiently long time.

16. No, unless it is raised to 18.

17. I would not recommend any change in the present law after the amendment of 1925 in the case of marital offences and leave matters to shape themselves in accordance with Mr. Sarda's Bill. I would raise the Age of Consent to 16 in the case of extra-marital offences.

18. No difference in procedure is necessary.

19. I can suggest none.

20. Penal legislation in this direction is not likely to be more effective in preventing marital offences than legislation fixing the minimum age of marriage. The last-named alternative would be more in consonance with public opinion.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda than on the strengthening of the penal law.

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**Written Statement, dated the 16th August 1928, of Mr. HARIBANSI SAHAI, President, Bar Association, Laheriasarai.**

1. No. So far as the case of married girls and their cohabitation with husband after the age of 14th is concerned there is no dissatisfaction.

Yes, as regards others the Age of Consent is rather low and in order to prevent consent being obtained by flimsy inducement the age should be raised to at least 16 years.

2. (1) So far as rape with husband is concerned it may be kept as it is.

(2) Extra-marital rape must be guarded against as at the age of 16 years a girl is so undeveloped in reasoning and understanding that her consent would be highly injurious to the social development. It has been observed that there have been abduction and kidnapping resulting in the births of children who are very weak and they are left destitute and sometimes killed out of shame in society. It is also supported by the fact that the age of kidnapping has been raised to 16 years and a much higher offence should not be raised to 16 years.

3. The crime of rape and abduction is not very common though abduction is more numerous than rape. No answer.

4. No answer.

5. The usual age at which a girl attains puberty is 13 years. It differs owing to the physical developments of the girls in rich and poor families and the physical labour to which they are used. So in labouring classes the puberty is sometimes postponed.

6. (1) Not common.

(2) Common.

(3) In cases where the girls attain puberty before 13 years and are also married there is a clear apprehension of cohabitation and such cases are not very uncommon.

No, our people cannot think of coming to the law courts against husbands

7. No.

8. Gaona, i.e., bringing the wife home after marriage is performed. Garbhadan ceremony is not performed. Gaona does in few cases coincide and is anterior to the consummation of marriage. Gaona is generally performed after puberty.

9. No, at least 3 years after, i.e., generally speaking, at the age of 16 years the age of a girl may be considered to be enough to justify consummation without injury to herself or her progeny.

10. 16 years in this part of the province.

11. Outside profession, we know of numerous cases in which consummation below 16 years has resulted in conceptions which end in births of dead children or even if the children are born alive they are very weak.

13. In this part of the country public opinion is in favour of an extension of the Age of Consent in both marital and extra-marital cases. This opinion is not directly due to the amendment of the law in 1925, but the propagandas of various educative institutions and newspaper discussions are responsible for it. It is confined to all literate and higher classes who alone are made to think about it. The labouring classes who form the majority of the population go by the external physical growth of the girls and are not concerned much with actual age. They are, however, on the right side in the majority of cases.

14. Women are in favour of early consummation so far as the higher castes are concerned. This is an inference from the fact that they desire to have their grandchildren early. Any girl who does not become mothers by 14 becomes the subject of comment and her mother-in-law will be offering vows to the gods for a child to have. This is, however, now in a state of suspense if not retrogression.

15. The determination of age of girls is left to the medical testimony, which is not always accurate. The result is not always satisfactory. The birth registers maintained at the police station are of no help as they are not full and do not contain any entry except that a boy or girl is born to such and such person. They are not preserved for more than a few years and are liable to tampering. The assessors of the village union may be better

able to be more accurate in the record of such births and it is suggested that their help may be taken in future, a copy of their entries is to be sent to the District Magistrate who will preserve it for 16 years.

16. No, unless the age is raised much more.

17—18. It will be more in consonance with public opinion to make the two different offences. In marital cases the offence will be the result of close association and living together of the husband and wife. The degree of self-restraint expected in such cases to surmount the natural inclination is certainly higher than in extra-marital cases and in some cases it may be that the husband may not be alone to blame except in those where education in sex matters has spread amongst the females the chances are the idea of early motherhood may be a guiding factor with the girl. Trial in marital cases should be in camera and only those persons who are the relatives and friends of the parties should be allowed to be present. Punishment in cases not attended with any injury to the girl should be a simple imprisonment not exceeding six months. In cases of injury, the charge may also include offence under other sections of the Penal Code. If this view is accepted the exception to section 375 has to be taken out.

As to extra-marital cases the punishment and trial should be as they are at present.

20. Marriage amongst all castes, except the Brahmin, Kshatriyas, Kayasths, Bhumiars and one or two other classes and educated Mohamedans, are arranged very early when the parties are below the age of 5 or 6 years. While in the higher classes, the idea of postponing the marriage after a certain age (such as 10 years amongst Brahmins) is regarded repugnant to Shastric injunction. The home bringing of the bride in the former case is almost invariably postponed till the girl attains puberty while in the latter it is not always so. The chances of motherhood amongst the former is thus very remote while in the latter it is possible and has been known to happen at ages below 13 years. Public opinion thus favours early marriage and at the same time it would postpone motherhood to a period when the girl is physically fit which should be at 16 years, and not earlier. The law should so far as this part of the country is concerned take into account these two ideas and find a *via-media*. By merely raising the age of marriage the object of preventing early motherhood may not be attained unless, of course, the age is put somewhere after 14 years. Having regard to what has been stated above, it seems both the ages of marriage and of consent have to be fixed by legislation. So 13 years for marriage and 15 years for consent is suggested. It is, however, certain that the fixing of the former age will have a very great influence in automatically veering public opinion against early motherhood.

21. Education and social propaganda will not in the present state of the country have the desired effect. So sanction of the laws is necessary.

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**Written Statement, dated the 17th August 1928, of Rai Bahadur RADHA KRISHNA, Chairman, Municipality, Muzaffarpore.**

1. Not much outward dissatisfaction is discernible, as such cases do not always come up before the public.

2. I think there must be some advance on the law as it exists at present. Many evils are attributed to very early sexual connection—mental and physical.

3. Not very frequent; but on account of family dishonour and other considerations, many such cases do not come before the court.

4. Yes, this is true to a certain extent; and so it is desirable to make further amendment in the law.

5. Between the ages of 13 and 14 years.
6. Not much. But from their very nature all such cases do not come up before the court.
7. Early consummation of marriage is not attributed to religious authority could be cited in support of it. Early marriage is no doubt sometimes attributed to religious injunction, so far as girls are concerned.
8. Generally *gaona* takes place before the consummation of marriage.
9. Not always. Generally between the ages of 16 and 17 years, or even a little later.
10. About 16 or 17 years of age.
11. This is a fact, but I cannot give details of individual cases.
12. Yes, one of the chief causes.
13. Generally among the educated classes.
14. Not very often.
15. Yes, sometimes; and then expert opinion is sought. The system of birth registration in villages is defective.
16. Yes, to a certain extent.
17. Yes, the punishment in the case of marital relation should be lighter as proposed.
18. Not necessary.
19. I cannot think of any additional safeguards.
20. It would be more desirable to fix minimum age of girls for marriage. But the present law may also be strengthened.
21. Social reform is no doubt desirable; but it is very slow-footed, and needs to be accelerated by legislation.

**Written Statement, dated the 27th August 1928, of the Honorary Secretary, the Bihar and Orissa Chamber of Commerce, Patna.**

1. There is considerable dissatisfaction among educated people who hold advanced views on questions of social reform.
2. Medical opinion is unanimous to the effect that the age of puberty is attained by a girl in India upon her reaching the age of thirteen or fourteen. But at the same time it must be obvious, in view of the terrible infant mortality which is due in some measure at least to early marriages and the consummation which follows with immature girls, that sexual cohabitation with girls is undesirable till they are older and more developed in physique and strength. In order to prevent physical deterioration it is necessary to raise the age-limit to sixteen. (See also answer to question No. 9.)
3. Not very frequent. The only measure which can effectively arrest the growth of the offence of rape which is becoming more and more wide-spread is to make it punishable where the girl is under 16 years of age, irrespective of whether or not she gives her consent. An advance on the present law will reduce cases of rape outside the marital state.
4. Marriages still take place below the age of 13 with perhaps the same frequency as before, and it is not unoften that cohabitation is resorted to prematurely before the girl-wife steps beyond the prescribed age-limit. Unless early marriage is stopped by legislation it is wellnigh impossible to protect married girls below the age of thirteen against cohabitation with husbands. A husband having sexual intercourse with his less than thirteen years old wife is seldom, if ever, brought to Court, and it is more than doubtful if people realise that the consummation of marriage with a girl who is not over the age of thirteen years, is an offence. The only effective remedy is to penalise early marriage.

5. Girls in this part of the country generally attain puberty between 13 and 14. The age at which puberty is reached is different in different classes, and girls belonging to the humbler strata of society and having to do physical labour, show signs of puberty at a rather later age.

6. Cohabitation—

- (1) before puberty is not uncommon;
- (2) soon after puberty is very common;
- (3) before the girl completes 13 years is not uncommon.

Not all of these cases come to court. Unless the crime is detected or is of an atrocious nature, these cases do not as a matter of general rule come to court.

7. No, there is no religious injunction in the Hindu Shastras supporting the practice of the early consummation of marriage before or at puberty.

8. "Gaona" is a ceremony that is usually performed except when at the time of marriage the bride and the bridegroom are sufficiently advanced in age. But in most cases "Gaona" takes place before it should as the popular notion in regard to maturity is very defective, especially from the view point of consummation of marriage which follows close upon the "Gaona".

9. The attainment of puberty is certainly not a sufficient indication of the girl's fitness for marriage. The Hindu Shastras do not consider a girl to be sufficiently mature for cohabitation until two or three years have elapsed after attainment of puberty. And what is more relevant, the books of Hindu Medical Jurisprudence establish the fact that a girl's physical development should not be regarded enough to justify consummation until she has reached the age of 16 years.

10. Not before 14 in any case.

11. No.

12. Yes. Early consummation and early maternity are responsible both for high maternal and infantile mortality as well as for physical degeneration of the community.

13. Public opinion is growing in volume and intensity against early marriage, but unfortunately it is confined mostly to the educated classes.

14. Yes. Women have a partiality for early consummation of marriage for their children.

15. Difficulties are generally experienced, but there does not seem to be an easy solution. The only satisfactory method of getting over this difficulty is to maintain up-to-date complete birth-registers, but this will probably be too cumbersome, and naturally the administrative difficulties will be great, may even be insuperable.

16. The difficulty would possibly remain as great as ever, though if the age is raised to 16 there should be less chance of error.

17. Marital offences are rather difficult to stop unless provision is made to lay the axe at the root of the evil by legislating against early marriage. (See answer to question No. 4.)

The nature and amount of punishment as at present provided for extra-marital offences are adequate and no change need be made. With regard to marital offence, it should be abolished and provision made instead to stop early marriage by legislation.

18. Does not arise.

19. No.

20. Legislation fixing the minimum age of marriage is likely to be more effective. It would be more desirable and more in consonance with public opinion. Penal legislation fixing a higher Age of Consent for marital cases will be unavailable for reasons indicated above.

21. In a conservative country like India progress is difficult to achieve by means of education and social propagandas alone. There has been a refresh-



ing change in the attitude of the people in regard to questions of social reform, but in view of the grave issues involved it is necessary to strengthen the penal law to secure the object in view.

**Written Statement, dated the 24th August 1928, of Babu SHIVA SHANKER JHA, B.L., M.L.C., Yakil, Madhubani.**

1. There is no general dissatisfaction.
2. Appalling number of infant mortality diseases among a large number of women, deaths at the time of labour, maternity diseases and troubles and general ill-health among the children are only some out of the many circumstances justifying making an advance on the present law.
3. These crimes are not frequent in this part of the country but it cannot be said that they do not exist at all. Cases under sections 497 and 498, Indian Penal Code, are not infrequent among low class people among whom re-marriage of women (particularly widows) is prevalent. The answer to the second part of question No. 3 is in the negative.

In order to make the law effective I would propose penalising of early marriage.

4. No. Penalise child marriage.
5. Generally between 12 and 14 years. It differs in different classes of society. Among the high class people it is earlier than among the lower and labour classes.
6. (1) Among the high class.
- (2) Among the lower classes.
- (3) Among the high class.

These cases do not come to court.

7. There is no religious injunction, so far as I know. So far as Brahmans are concerned they rely on a Sloka (Sanskrit couplet) of some recent insignificant Pandit which runs thus:—

Ashta varsha, etc.

8. Gaona and not Garbhadan ceremony is usually performed in this part. Gaona is generally anterior to the consummation of marriage. It is performed mostly before, only rarely after the attainment of puberty.

9. No. I think the age should not be less than 15 years—2 or 3 years after the attainment of puberty.

10. This is a difficult question. It all depends on the girls' education which is almost nil in this part. Most of the girls in this part will never be able to give an intelligent consent with due realisation of consequences.

11. Yes. It resulted in injury to her body and general health and also prejudicially affected her progeny.

The child was born while she was 12 years of age. The child is all lean and emaciated and the mother had some internal organ dislocated.

12. Yes.

- 13—14. No.

15. I personally have not come across any, but difficulties do arise and are bound to arise as this defence will be quite handy.

I suggest preservation of birth-registers for at least 16 years.

16. No.

20. Fixing the minimum age of marriage will be more effective.

Education being at a low ebb in this part, public opinion will be against any innovation, but it is bound to be short-lived and such opinion should not be cared for. Intelligent public opinion will be in favour of it.

21. Both.

**Written Statement, dated the 18th August 1928, of Khan Sahib  
ABDUL QADIR KHAN, Sub-Divisional Officer, Latehar.**

1. Yes, to some extent among the educated upper classes. In fact the age of marriage for boys as well as girls has of late years, considerably gone up in this group, partly on account of a realisation of the consequences of early marriage and partly for economic considerations. I think however that it was not due to legislation, but to a spread of education and for this reason the dissatisfaction has not reached the masses.

2. I think time has not yet arrived for making an advance on the present law. In a country like India the process of Social Reform by legislation is necessarily slow. People do not easily realise that what is not even Social offence can, by legislation, become a criminal offence. It has taken nearly half a century for the country to look upon Suttee, for instance, as a crime. I doubt if even to-day it is treated in the same category of crimes as Robbery, Cheating, etc. No figures are available to show what effect the amendments of 1925 have had on the Social life of villagers. People of all castes and creeds in the interior are still very conservative and by impression is that they have not yet assimilated even the amendments of 1925 into their daily life. I would therefore retain the law of the Age of Consent as it is and instead of making an advance on the present law, I would devise means of strictly enforcing the provisions of the Amended Act.

3. No. I have not noticed that the amendment of law made in 1925 has had any effect in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. It is possible that majority of inter-caste, cases of rape and seduction do not come to court. The only measure to make the law effective that suggests itself to me is to vest the village unions with powers to enquire into and report on such cases without the intervention of Police. It is true that the proposal is not free from dangers attendant on employing non-official agency on such important matters. It will to my mind, have at least the effect of bringing all such cases to the notice of authorities. The enquiries by village officials may be supervised by district authorities, but the investigation must be done by the villagers themselves in the village.

4. (1) No.

(2) Yes, to some extent.

(3) No.

Please refer to my answer on question No. 2. I would suggest compulsory registration of marriages as the only means of making it effective, and marriages should never be registered without the production of age certificates. The proposal would in all likelihood be violently opposed by the majority of people in the country and steps will have to be taken to introduce it as unostentatiously as possible and affording facilities to people in getting age and marriage certificates.

5. 13 to 15 according to social conditions, habits of life and general environments. Among the aborigines, girls seldom attain puberty before the age of 15, while girls living in easy and affluent circumstances and also those who succumb to amorous advances at an early age, attain puberty much earlier.

6. (1) Very rarely.

(2) Yes.

(3) No.

The only people among whom cohabitation is said to be common sometimes even before the girls attain puberty are the class who supply domestic servants for upper classes. I cannot resist the temptation of quoting a local saying in this District that "a Kahar with one daughter only works

half a day and one with two daughters not all"—(Talents Palamau Gazetteer, page 59).

7. There is no religious injunction among Mohammadians regarding consummation of marriage before or at puberty. I am indebted to my Second Officer Babu Narendranath Das Gupta for the following note regarding early consummation of marriage among Hindus:—

"Early consummation of marriage before or after puberty does not appear to be due to any religious injunction. Upholders of 'early marriage'—theory often refer to a text 'in *Parasar Samhita*, in which it is stated. A girl of 8 years becomes Gouri, of 9 years becomes Rohini, of 10 years becomes Kanya and a girl over 10 years becomes Rajaswala (i.e., one with menses on). The father, mother 'and elder brother of such a girl (over 10 years) suffer hell if they see her'. Whatever might be the Orthodox view in which time of marriage was considered, it is certain that "early consummation of marriage was not insisted upon". The code of Manu may be "referred to which says a girl attaining puberty should wait for three years or more, to be united with a fit husband" (chapter 9, verse 90), *Susruta*; the medical authority of the ancient Hindus views the matter as follows. 'If a girl of less than 16 years is impregnated by a man of less than 25 years the foetus dies in the womb, or if it survives it cannot live long and even if it lives, it becomes of very weak health (chapter 10, verses 47—48)'.

8. Yes. It is generally anterior of consummation of marriage. The performance depends more upon the economic and domestic condition of the parents rather than on the attainment of puberty. It is very rarely delayed after the girl has attained puberty.

9. This is a question which a doctor only can properly answer. Personally I do not think the attainment of puberty is a sufficient indication of Physical maturity to justify consummation of marriage. So far as this country is concerned, I think 15 is a safe age for consummation without injury to the health of the girl or her progeny.

10. This too would best be answered by a Doctor. I would put 16 as the age of an intelligent consent.

11. No.

12. Yes. Early consummation and the consequential early maternity have not only retarded intellectual and physical progress but have been the cause of ruin in many families. Boys become fathers before they have any notices of independent income. They add to the burden of the household and children born in such conditions are economically a drag on the family. That the boy-father should have independent means of livelihood is never even thought of. The child and the girl-mother receive inadequate nourishment and the result is an appalling death-rate among women between the ages of 15 and 30 and a very high rate of infant mortality. If the boy-father whose powers to resist disease are very much weakened by an early indulgence in the exercise of conjugal rights dies, the young widow, who among Hindus cannot remarry, is not only a burden on the family but also becomes a source of danger to the morals of the youths of the vicinity.

13. *Vide* my answer to question No. 2.

14. Yes. It is generally the mother-in-laws who insist on early consummation of marriage. A child is considered to be a blessing for the house and therefore it is a desire to possess children in their houses that actuates mothers in desiring an early consummation of marriage. It may also be said perhaps that mothers hasten the consummation not out of any regard for their sons but for a consideration of their own personal comfort. The addition of the daughter-in-law adds to the number of working members of the family and in proportion affords a relief to the mother.

15. There have been no cases of rape in this area in which the age of the girl was in question. I think female expert medical opinion would be too strong to be challenged in any Court.

16. Yes, with 15 years as the Age of Consent.

17. Yes. Marital offence is after all a social and not strictly speaking a criminal offence. The offender can scarcely be accused of moral turpitude. He is an offender against the laws of public health and law of society, and not against any code of morality. His action would be unsportsman like, mean, cowardly but not criminal. The extra-marital offender is clearly a criminal, and I would prescribe a sentence of whipping when the offence is proved.

18. Offences without the marital state should be tried as at present but those within the marital state should be tried by the village courts organised by the villagers and supervised by the officials (*vide* my answer to question 3 above).

19. I do not think improper prosecution and extortion can be stopped from outside, that is by legislation or executive authority. It should come from within. The general uplift of the masses by education, social reform, instilling a spirit of sport, and widening the general outlook of village community will automatically furnish adequate safeguards.

20. Legislations fixing a minimum age of marriage would undoubtedly be more effective than legislation fixing a higher Age of Consent for marital cases. The latter would seldom if ever be brought to light. No girl is going to prosecute her husband for extorting consent at an age lower than that prescribed by law. Legislation prescribing a higher Age of Consent for marital cases will in all likelihood be a dead letter.

21. Most decidedly on the progress of social reforms by means of education and social propaganda. As I said before the process of raising the Age of Consent by legislation is necessarily slow and tardy and beset with innumerable difficulties. Rightly or wrongly people will always look upon legislation of this kind as an interference with their liberties. Education and social propaganda would still be necessary if legislation is to be effective. So why put the cart before the horse. Educate and then legislate and not legislate first and then educate them.

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**Written Statement, dated the 18th August 1928, of Mr. B. K. GOKHALE, I.C.S., Deputy Commissioner, Manbhumi.**

1. There is no dissatisfaction so far as the mass of the people are concerned. The masses are bound by custom and tradition and they are not in the habit of exercising their independent judgment. They are apt to judge things from the point of view of outworn tradition rather than a spirit of real kindness and consideration for others. It is only amongst the really educated minority that there is dissatisfaction with the state of the law as it exists at present under which an immature girl of 12 years is left to the mercy of a grown up debauched drunkard without any hope of redress, to be ruined perhaps for all her life.

2. Sections 375 and 376, Indian Penal Code, were only amended in 1925. Since then there have been very few cases in court from which it could be ascertained how far the amendments have improved matters. If it had been merely a question of amending these two sections, I would be inclined to say that it is too early to make any advance on the position reached in 1925. In view of the fact, however, that the question about the age of marriage is also now under consideration in Mr. Sarda's Bill, I think there is a strong case for making an advance on the present law and fix 14 as the Age of Consent for girls in marriage and 16 in extra-marital cases.

3. Crimes of seduction or rape are not frequent in Manbhumi. The amendment of the law made in 1925 has remained more or less a dead letter. I would advocate the raising of the Age of Consent as stated above to 14 for marital and 16 for extra-marital cases. Without taking any

special measures to make the new law effective, aggrieved parties would by themselves come to court and state their grievances. In other cases, where none of the parties feels aggrieved, it is better for the present to do nothing but to leave it to public opinion to see that such cases are discouraged. Especially in marital cases, there should be as little interference as possible. Otherwise it will be difficult to safeguard against improper prosecution or extortion.

4. This question has been already answered above.

5. Girls generally attain puberty about the age of 13. Amongst the aboriginal classes like Santals and others, who lead healthy outdoor life, the age of puberty is a little later, e.g., 14 or 15.

6. (1) Not very common before puberty.

(2) Very common soon after puberty.

(3) Very common before the girl completes 13 years. Some cases come to court. Day before yesterday there was a case before me in which a Muhammadan girl of 11 was forced to cohabit with her husband who has got another wife. Thereupon the girl ran away and I was asked to restore her to her husband under section 522, Criminal Procedure Code, which I refused.

7. There is no religious injunction for early consummation of marriage before or at puberty. It is merely animal instinct which is responsible for this practice. Another reason is the case with which a man can get a second wife even when everybody knows that his first wife died as the result of ill treatment. It is the want of consideration and respect for women which is responsible for all the trouble.

8. Amongst the Bengalis, *Diragaman* ceremony is usually performed generally soon after the attainment of puberty. In some cases *Diragaman* also takes place before the girl has attained puberty when her services are required to help in the household. There is also the ceremony of *Foolsajya*, which generally takes place on the 3rd day after marriage. The husband and wife sleep in one room but the elderly relations keep a look out, which generally prevents the girl being seriously maltreated.

9. In my opinion the attainment of puberty is not a sufficient sign of physical maturity to justify consummation of marriage. We have to consider not only the girl's physical body but also her emotional nature as well as her mental development. Until the girl has completed her own development physically, emotionally and mentally, she ought not to be called upon to undertake the care of another human being. From this point of view no girl should be a mother before she attains the age of 18 years, or even later, if possible. By the time she is 18, a girl has fully completed her physical growth and she has also had sufficient education to learn self-control, which is so essential to her if she has successfully to bring up a young baby and make it a strong healthy citizen. In the old days when joint families were the rule rather than the exception, no serious harm was done by a young girl becoming a mother at an early age, because there were always elderly ladies in the family who would take almost entire charge of the infant, nurse it, clothe it and keep up at nights with it in case of illness. It is not so much the physical act of procreation which undermines the health of women as the subsequent worry and botheration, the disturbed sleep at nights and the nursing and care of the infant in sickness. The joint family system has virtually disappeared and the family now consists of the husband, wife and children. The wife has, therefore, to undertake the responsibility of managing the household as well as look after the husband, who expects her to be his friend and companion. Under the circumstances, it is much more necessary now than in the past that girls should not bear children until they are fully equipped physically, emotionally and mentally and have built up a strong constitution.

Another consequence of the disappearance of the joint family system is that girls do not receive proper attention during pregnancy or after delivery.

Both the husband and wife are generally young and inexperienced. They have also got the confidence of youth and no one to advise or take care of them, with the result that after 2 or 3 deliveries the wives become physical wrecks. The law cannot now step in to bring back the old joint family system. It is, therefore, very necessary that the law should step in to prevent girls from becoming mothers while they are still immature.

10. Though 18 is a safe age for bearing children, I would advocate the age limits as stated by me above (14 and 16) having due regard to the state of public opinion and the difficulty of getting any higher age limits accepted by the Assembly.

11. I have seen such cases in hospital but I have not kept any notes from which I can give details of age and injury sustained. One such case of a Muhammadan girl of 11 which came up before me day before yesterday, I have already noted above.

12. High maternal and infantile mortality is due in my opinion to the decay of the joint family system. Early consummation and early maternity have been in existence in this country since a very long time but when there were elderly relations in the family to take entire charge of the infant as well as to take care of the mother during pregnancy and afterwards, the rate of maternal and infantile mortality was not high. At present both these rates are very high because

- (1) the mothers are ignorant and inexperienced;
- (2) there are no elderly female relations to take sufficient care;
- (3) Maternity and Child Welfare Centres have not yet come into existence.

The real solution of the problem is to raise the Age of Consent and to establish Maternity and Child Welfare Centres which will give free advice to young and inexperienced mothers as well as send out efficient midwives and nurses to help during delivery and for some time afterwards.

In the old days the mother was considered to be untouchable for 3 months after childbirth. This was a very wise provision which enabled her to have perfect rest for 3 months, so that she recovered her strength and became fit once more. Even after 3 months she was not supposed to do ordinary duties so long as she was nursing. Now these rules of untouchability have necessarily been relaxed. People forgot the real reasons which lay behind these rules and thought that they were relics of superstition. The inevitable result has been that mothers hardly get even a month's complete rest after childbirth. In most cases, after 8 or 9 days the mothers have to take the worries and responsibilities of the family on their own shoulders.

13. There has been no development of public opinion in Manbhum since 1925.

14. Women favour early consummation of marriage for their children because following blind tradition they are more concerned with the wishes of the bridegroom than with the well-being of the bride. The women here are most backward and uneducated. The total number of Girls' Schools is 35. Upper and Lower Primary, in an area of 4,000 square miles with a total population of nearly 16 lakhs. There is no Middle English School for Girls, let alone a High School.

15. There is always the difficulty of determining the age of girls in connection with cases in court. It is not feasible to have an accurate record of births. Oral evidence of witnesses is unreliable. Medical evidence is vague and unconvincing. The only remedy that I can suggest is to raise the Age of Consent to 14 years or above, so that no serious harm would be done if in the case of a girl whose real age is 13 the Doctor gives his opinion that she appears to be of 14 years.

16. I have already replied to this question above.

17. I am in favour of separating extra-marital and marital offences. For extra-marital offences, the punishment should be as at present for rape. For marital offences, I would suggest imprisonment of either description for a term which may extend to two years or fine or both.

18. Extra-marital cases should be tried as at present. Marital cases should be tried only by the District Magistrate or by a specially selected first class Magistrate. These officers should be informed not to impose any sentence of imprisonment except in cases of cruelty or brutality or any other circumstances justifying a sentence of imprisonment. I would also suggest that the Police should have nothing to do with marital cases except to escort the accused to Jail if he is convicted and sentenced to imprisonment. Provision should be made for hearing these cases *in camera*.

19. I have no such safeguards to suggest. It is very unlikely that any parties will have recourse to law except when they have a very real grievance, *e.g.*, when the husband is coarse and brutal and insists on maltreating his wife in spite of warning and remonstrances. The District Magistrate only should take cognizance of these cases, only on the complaint of the girl or some near relative.

20. I consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective as well as more in consonance with public opinion than legislation fixing the minimum age of marriage. Really speaking, however, the two things should go hand in hand. It would be a real hardship if a girl is allowed to be married, say at the age of 12, but not allowed to have any intercourse with her husband until the age of 14. There is also the question of widowhood to be considered. A widow is a widow whether the marriage was consummated or not. When widow re-marriage has made so little progress and when the condition of widows is so deplorable, it is better once for all to prevent girls under 14 from becoming widows. Here again I am personally inclined to favour even a higher age limit but considering the state of public opinion I think 14 would be a safe minimum age for marriage as well as the Age of Consent for marital cases. For extra-marital cases, the Age of Consent should be 16.

21. Both are necessary. Education and social propaganda, are of course preferable, but there are many people who do not care for public opinion and who are so brutal and stupid that it is necessary to strengthen the penal law to secure the object in view. Laws are not meant for good and considerate people. They are necessary for people who are uncultured and who are lacking in self-control and consideration for others, for beasts in human shape who take a pleasure in satisfying their lust at the cost of innocent victims, who regard religion merely as a shield to protect them in their evil ways, who are in short a disgrace to God as well as humanity.

**Written Statement, dated the 6th September 1928, of R. S. LOKNATH MISRA, B.L., M.L.C., Government Pleader, Puri.**

1. Yes.

2. I am in favour of making an advance on the present law. The condition of child mothers is deplorable. Young girls are not in a position to judge as to the consequence of consenting to sexual intercourse and the tender age of the girl is taken advantage of by many irresponsible and reckless persons.

3. Crimes of seduction and rape though frequent in this part of the Country do not usually come to court on account of social scandal. The amendment of law in 1925 raising the Age of Consent has produced no effect.

I would like to raise the Age of Consent to 16, to make a provision that the owner of the house in which such occurrence takes place will be bound to give information of the occurrence to the authorities, failing which he

will be punished. (Section 45, Criminal Procedure Code, may be amended accordingly.)

4. No.

I would propose that girls below 14 years of age should not be married.

5. The girls in this part of the Country generally attain puberty at the age of 12 or 13 but in cases of girls of lower class people there is some delay of a year or two. That depends on physical condition and the mode of living of the girls. There are instances of girls having attained puberty at the age of 11.

6. In this part of the Country cohabitation is common soon after puberty before the girl completes 13 years.

Such cases do not come to Court on account of scandal.

7. No.

8. Such ceremonies are not performed in this part of the Country.

9. No. Two or three years after attaining puberty, i.e., in the 15th year.

10. At the age of 16.

11. Not answered.

12. Yes.

13. There is a general desire of enhancing the Age of Consent but the uneducated and orthodox people are opposed to it.

14. Uneducated women are in favour of early consummation of marriage for their children but educated women are opposed to it.

15. No. Such cases are generally decided on medical opinion and horoscope.

16. Not answered.

17 & 18. No.

19. No hard and fast rule can be laid down; every case upon its own merit.

20. Legislation fixing the minimum age of marriage will be more effective.

21. I would prefer strengthening of penal law.

**Written Statement, dated the 8th September 1928, from the Hon'ble Babu ANUGRAH NARAIN SINHA, M.A., B.L., Chairman, District Board, Gaya.**

1. No.

2. The present law is sufficient.

3. Crimes of seduction or rape are not frequent in this part of the country.

4. The present law is effective in protecting married girls.

5. 14 years and above.

I do not think there is much difference in this matter between different communities though in some well-to-do families some girls may attain puberty earlier.

6. Cohabitation before puberty or 13 years of age is not common in this part of the country.

7. It is not done so in this part of the country; though there may be some religious injunction it is not followed.

8. Garbhadhan ceremony is not performed in this part.

9. I think two years after puberty may do.

10. 16.



11. I do not belong to medical profession.
12. Yes.
13. No.
14. Old women want so in some cases.
15. I am not aware.
16. Yes.
- 17 & 18. No.
19. I am unfit to make any suggestion.
20. I think fixing the minimum age for marriage will be more effective.
21. I think progress of social reform will be better but as it will take time the strengthening of the penal law will be more effective.

**Written Statement, dated the 9th September 1928, of Pandit SHIVA CANDRA MISRA, Professor of D. S. S. College, Muzaffarpore.**

1. The people are not satisfied with the Age of Consent for sexual intercourse by a man with his own wife as at present provided in sections 375 and 376 of the Indian Penal Code. The Age of Consent for the wife fixed under these sections is not quite proper and as a result of it recourse at this age the womenfolk are gradually deteriorating and the future of their progeny looks gloomy. Although the evil effects of such early intercourse are found in every community and class of people, but those who do not employ their wisdom in such matters are the worst sufferers.

2. (1) So far as the Age of Consent for sexual intercourse by a man with a woman not being his own wife is concerned, I have nothing particularly to say and the age as given in the sections at present may be retained. But as regards the intercourse by a man with his own wife, the Age of Consent which is fixed at present is a bit too low and can be retained only as an exception.

(2) As a rule there should be no cohabitation before the age of 15 by a man with his own wife. There can be made some exceptions to this for the girls who get early development due to particular climate or mode of life, and in such cases, the Age of Consent might be reduced to 13 or 14 in exception to the general rule. In my opinion, therefore, the Age of Consent which is provided under the present law must be raised.

3. In our part of the country, the crimes of seduction or rape are very few, while the amendment of the law made in 1925 has also reduced such crimes to a great extent.

4. (1) The amendment of 1925 raising the Age of Consent within the marital state has certainly produced much effect by postponing the consummation of marriage.

(2) It has stimulated public opinion in that direction.

(3) And there has been tendency in the people to give their daughters in marriage beyond 13.

5. In this province of Bihar the girls attain puberty (which I understand is a time of getting menstruation) between the age of 11 and 13 years and this does not differ in different castes and communities. But no doubt, there appears some difference on account of the living of the different classes of society. Among the rich and ease-loving society as well as among the meat-eating classes, the girls attain puberty rather earlier, although such cases are very few.

6. In our province of Bihar—

(1) The cohabitation is never heard of before puberty among any class or classes of people.

(2) The cohabitation certainly takes place soon after puberty, but the percentage of such cases is not more than 33 per cent.

(3) Yes, the cohabitation before the girl complete 13 years is heard of among the lower and illiterate classes of the people, but such cases are also very few and far between.

No such cases come to court.

7. It is a fact that the Hindu religion has permitted the sexual intercourse with a girl who has got menstruation. This itself forbids the cohabitation with a girl before she gets menstruation. It does not follow from this that cohabitation with a girl just after she has (got menstruation) is compulsory although the girl has not been fit for cohabitation for other reasons.

It is wrong to believe that a girl is fit for cohabitation just after she gets menstruation. It appears that the authors of religious scriptures enjoined cohabitation with a girl when she gets menstruation keeping in view only that it was necessary for procreation. It is not necessary that a girl will be fit for procreation as well as she will have the highest desire for cohabitation just after her first menstruation. Further she requires the development of her body also.

Even if fit for procreation, the result of this cannot be good and no healthy child can be expected from the cohabitation at this period. This is why Sushruta, the great author of the Ayurvedas (the Science of Medicine), although permitting marriage of a girl at 12, has also observed that the good and healthy child cannot be born of a girl before she attains 16.

8. There is custom of Gaona prevailing in our part of the country.

The 'Gaona' ceremony is generally performed before the consummation of marriage.

9. The menstruation in a girl is not sufficient indication for the full physical development and the girl is expected to attain the full development of her body at the age of 14. Therefore, no girl can be fit for cohabitation before the age of 14 years without injury to her own health and that of her progeny.

The girl can be fit for consummation of marriage at least 2 or 3 years after she gets menstruation.

10. A girl in India cannot give an intelligent consent to cohabitation before the age of 14 with due realisation of consequences.

11. Yes, in my long experience I have found that the cohabitation before puberty or after puberty but before full physical development of a girl has resulted in injury to her health or body or prejudicially affected her progeny. I have known of several families who have suffered much on account of this.

12. Early consummation and early maternity are one of the most important causes for the high maternal and infantile mortality.

13. Yes. There has been some development of public opinion in our parts in favour of your extension of the Age of Consent in marital and extra-marital cases since the amendment of 1925. It is, no doubt, confined to the right-thinking men.

14 & 15. No.

16. Yes.

17. Yes. I would like to separate extra-marital and marital offences into different offences.

18 & 19. No.

20. The penal legislation fixing the minimum age at 14 for consent would be more effective than fixing the higher Age of Consent for marital cases. This would be in consonance with the public opinion in our part of the country.

21. There should be strong opposition to the early marriage and early consummation, but the method adopted for it also must be harmless. Taking in view the present condition of the Indian society and also the habit of the people of this country not to make a departure from the long established practice it is never expected that such bad custom of the society would be removed in near future through the instrumentality of the society or by the spread of education. Thus such bad custom can be removed by only having recourse to penal law and then maybe some sort of penal legislation to secure the object in view. But the police should not be entrusted to enforce such legislation. In my opinion there should be the formation of a semi-Government Board consisting of the representatives of the different classes of the society in each Sub-Division. This Board will determine the age of such girls, award proper punishment for those infringing the provisions of laws. If the crimes against the legislation be investigated by the police or tried by the courts like other ordinary and general crimes, it will bring disastrous results.

**Written Statement, dated the 9th September 1928, of Raj Devi D. P. SINHA, Secretary, Women's Educational Association, Muzaffarpore.**

1. The common run of the people never think over this matter, but the educated section of the society are dissatisfied as regards the Age of Consent, as contained in sections 375 and 376, Indian Penal Code.

2. The Age of Consent should be increased as proposed, because without so doing, there is no legal, social, or religious impediment, to get rid of the cursed early marriage, which

(a) brings about early widowhood, viz., 396,557 is the number of Hindu widows below 15 years of age,

(b) shatters the health of the womanhood, because they sometimes become mothers before they have passed their girlhood,

(c) results in the birth of weak progeny, who die, mostly in the confinement of their mothers,

(d) interferes with female education, without which no amount of legislative enactment will bring about the desired effect. Simply on account of early marriage, girls are stopped from going to school, at the age of 12, exactly the time when they must begin their study in right earnest.

(e) Early marriage of the girls retards and interferes with the education of the boys as well because great emphasis is laid on the parity of the age between the couple to be married. The proposal of marriage commences from the girl's side in India; and hence, early marriage of girls naturally brings about the early marriage of the boys, who become fathers of numerous children before they enter the college.

Thus, it is clear, that from the medical point of view, the progeny, which is begetted by these undeveloped and immaturred parents, is weak, unhealthy, deformed, and hence, the nation as a whole is drawing towards extinction.

3. I must say, here, that my opinion is based upon my experience of the people of Bihar only and not of Chota Nagpur or Orissa. No, these are not frequent in this part of the country. But they occur in the low caste and among those communities in which there is dearth of girls for marriage, viz., the poor section of Bhumihaar and Rajput.

The amendment of the law 1925 finds place in the almirah of the lawyers only and common people have got no knowledge of it, and the crimes where they do exist, are still present and the amendment of 1925 has produced no effect whatsoever.

4. No. Desired effect may be produced by educating the masses or by making marriage penal before 15 in case of girls and 20 or 18 in case of male.

5. Girls in this part of the country attain puberty generally at the age between 14 and 15 years. It certainly differs, in different caste and community, mode of living and profession and pecuniary status of the particular family or caste. Girls in high and well-to-do classes attain puberty sooner than in those classes or caste where the girls are ill fed and have to work hard.

6. In this part of the country, owing to the hard lot of the middle class people, so far as pecuniary status is concerned marriages of girls are put off as far as practicable. Hence, there is no early cohabitation in this section of the people; but cohabitation is common soon after puberty in the lower class. Such cases never come to court.

7. As far as I can say, there is no such religious injunction enjoining early consummation: neither is there any penalty prescribed for its breach.

8. Garbhadhan ceremony is obsolete now. The Gaona ceremony, which was necessary corollary of early marriage, is gradually dwindling down in the higher class. But it is common in the lower classes of people, where early marriage is still common and it is performed generally, when the girls attain puberty.

9. Attainment of puberty should not be the only indication of girl's fitness for cohabitation. Her physical development and ability to bear child without any harm to her person should be taken into account.

10. One definite period cannot be prescribed for whole of India, because much depends on the education, family, society and the climate and mode of living of a particular community.

11. No.

12. Yes, early consummation which is necessary outcome of early marriage, is responsible for the high child mortality and degradation of manhood of India and production of weak and coward children.

13 & 14. No.

15, 16, 17, 18 & 19. I am unable to give my opinion on these questions.

20. Fixing the minimum age of marriage and prescribing penalty for its breach would be more effective than raising the Age of Consent.

21. Taking into consideration the ignorance of the masses here, strengthening of penal law would be better. The social reform and education and social propaganda would help people in welcoming the law.

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**Written Statement, dated the 12th September 1928, of Mr. DASA-RATH LAL, Pleader and Municipal Commissioner, Gaya.**

1. No.

2. (2) In my opinion in the 5th Clause, "Sixteen" should be substituted for "Fourteen" as before the 16th year the girls especially of low class who attain puberty comparatively at later period and who are generally not intelligent are not capable of giving intelligent consent before the 16th year of age.

(1) It seldom, perhaps one in thousand cases, happens that before 13th year, a husband cohabits with his wife, so I am in favour of the retaining of the present law with the exception as suggested in the foregoing answer to Cl. (2).

3. No. Raising the Age of Consent to 14 years has not been effective. I would propose raising it to 16.

4. The Law was unnecessary. It has not made any change in the habit of the people marrying the girls when below 13 but not bringing the brides to the husband's family before 13 or 14.

5. Girls in higher classes attain puberty at 13 and in lower classes at 15. By higher classes I mean Brahmans, Khatreas, Kayesthas, Babbans, Agarwalas and high class Banias. Such is the case in all the families living easy lives of comfort, well fed and well clothed.

6. No. But cohabitation soon after 13 is not unusual though it cannot be said to be common. It is common after 14th year, if you call 14th as the age of puberty.

7. No.

8. Gaona ceremony is generally performed and performed after the age of 13 years. It generally coincides with the consummation of marriage but sometimes it takes place even when the girls attain 16th year.

9. 15th year in case of higher and *easy leading lives* families and 16th in the lower and poor living lives families.

10. Girls in India never think of physical consequences but 16th year may be expected to enable them to give their consent with due realization of its consequences on their families or her own future fate.

11. No.

12. Yes.

13. No.

14. Yes.

15. I do not know. But difficulties there must be. These days village chaukidars report the births of children with dates. These dates may be preserved in a regular Register in the Magistrate's office from which notices be issued to the parents of the dates and they be required to file any objection. In absence of any objection the age so found should be presumed to be correct. Note in the Register that notice by registered post was issued shall be conclusive evidence of service. The notice should mention that if the parents do not object to the dates of birth, they need not reply.

16. No.

17. Yes. For extra-marital cases, "fifthly" and "thirdly" of section 375. 7 years, and for "first", "second" and "thirdly" of the above section 5 years. For marital offences, six months.

18. Yes, in case of marital offences, the accused should be tried by a Bench of three Honorary Magistrates, and only summons should be issued in the first instance.

19. "Against collusion to protect the offender", the first information to the Police or any other authority attested by two respectable witnesses of the co-villager or locality should not be allowed to be retracted. "Against improper prosecution", it should not be started unless accompanied by a certified copy of Register of Age in cases where age is material and in all cases by the information attested by two witnesses as above said.

20. The former more acceptable, though both will be disliked by the public.

21. Yes.

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**Written Statement, dated the 23rd August 1928, of Mr. N. F. PECK,  
Officiating Commissioner of the Orissa Division.**

I am not in a position to give replies to the questionnaire but it is my opinion that the bill if passed into law will almost remain a dead letter except in case of village and inter-caste feuds where it will place a very convenient weapon of oppression and terrorism in the hands of the unscrupulous persons.

Such a long existing practice can scarcely be stopped by legislation and it is better in such matters to leave it to the spread of education and advanced social ideas to do their work. It may be to some extent right to raise the Age of Consent but to penalise such marriages will never have the support of an overwhelmingly large mass of the people whose opinion is seldom taken.

**Written Statement, dated the 13th August 1929, of Mr. JAYANANDA KUMAR, Assistant Postmaster General, Bihar and Orissa.**

1. There is neither satisfaction nor dissatisfaction as the mass is unaware of the law on the subject.

2. I am of opinion that so far as cases of rape are concerned we have a good case to make an advance on the present law. The previous law was amended three years ago and it has not proved to be effective. Following therefore the process of evolution, the age limit should be raised to 16 years which being done, no further amendment will be necessary in future.

3. Cases of rape do take place but are very rarely taken to Courts in our part of the country as the raped person and her relations consider it a disgrace to them. The amendment of 1925 has, however, neither succeeded in preventing nor in reducing the crime. This is due to ignorance of the law and the consequence of the action.

I would propose that an annual declaration should be obtained from the headmen of villages to the effect that the sections of the Penal Code have been explained to the villagers.

4. Not at all. It has proved an utter failure so far as the law itself is concerned. In my opinion no law on the subject can be effective as there will seldom, if ever, be a complaint however great the torture to the girl may be. The matter is one that rests on the society and not on the legislature.

5. Between 12 and 15. It does differ in different castes. In low caste girls, it takes longer than 15. To a layman, like me, I think it depends on the food and nourishment the girl receives.

6. It is not common but it is not absent. The cases seldom go to Courts.

7. I do not think so. It is more a social and moral evil than a religious injunction.

8. Gaona ceremony is prevalent but not Garbhadhan. No consideration is given to the question of puberty. Sometimes it is performed after the puberty and sometimes before it. It all depends on the auspiciousness of the time after marriage, the date and time being fixed by astrological calculation.

9. I do not consider the attainment of puberty a sufficient indication of physical maturity. I think it should not be less than 16 years.

10. At the age of 16 years.

11. I have come across such cases. Recently the life of a girl of 14 was greatly endangered due to conception before attaining the age of 14 even. She had an abortion and is still confined to bed.

12. I consider it to be one of the causes but not the only cause for high infant mortality. The other causes are want of care, nourishment, etc.

13. There has been no further development of public opinion.

14. They very much favour it. It is due to want of education and culture.

15. There is a difficulty as in every such case the defence is that the girl had attained the proper age.

16. Yes, if the age be raised to 16 years.

17. I would separate the two. By the spread of education, the child marriage is likely to disappear and no legislation is required. As for extra-marital offences, the present punishment is quite adequate.

18. I would suggest that all such cases whether marital or extra-marital should be tried in camera. The cases relating to marital offences will however be extremely rare.

19. No safeguard is necessary.

20. I would suggest no legislation for marital age. I would leave the matter to the social workers.

21. The same as in question 20.

### **Replies to the Questionnaire by Thakur MAHENDRA NATH SHAH DEO, Secretary, Landholders' Association, Ranchi.**

I have the honour to say that the Association has no remarks to make and entirely agrees with the observations made by Sir Hari Singh Gour in the Legislative Assembly.

2. I am further to say that no one of this Association is likely to go before the Committee as a witness to give evidence over the subject.

### **Written Statement, dated the 22nd September 1928, from Mr. M. BANERJEE, M.A., B.L., Chairman, Sambalpur Municipality.**

1. With the right-minded men. Yes.

2. Making an advance on the present law on moral and physiological grounds.

3. Seduction cases, there are many—not all coming to courts. I am not sure of statistics but I am afraid one year's difference does not make much improvement.

4. Here there is no such problem as girls according to custom go to live with their husbands after maturity.

5. Twelve or thirteen amongst the higher castes and thirteen and fourteen amongst the lower castes.

6. (1) Against custom.

(2) Within a few months of maturity.

(3) Not that I know of.

7. Religious injunction—I am not sure of what nature it is.

8. Yes—it is performed after attainment of puberty.

9. No. The physical development is fairly complete at 15 and not before.

10. About 15.

11. On consulting a local *vaid* of some eminence I am informed that cases of physical degeneration are not rare. In the course of last 12 months he had been called upon to treat two cases of grave nature.

12. I believe so.

13. Yes this is confined to a small section of the educated community.

14. They are voiceless here.

15. This matter was never agitated here so far.

17. It is hard to make a difference. The gravity of the offence is equally balanced in either case.

18. I would suggest a trial in camera for the marital state offence.

19. I would suggest some extra provision for safe-guarding against improper prosecution in cases within the marital state.

20. Fixing minimum age of marriage would be better and safer. There is not much of public opinion here on the matter so far as I know.

21. I would have both. Education is a slow process. The evil requires the immediate restraining hand of law.

**Written Statement, dated the 16th October 1929, of Rai Sahib KEDARNATH DUTT, B.L., Chairman, Daltonganj Municipality.**

1. There is no dissatisfaction. The public are agitated when a change in the law is made not because the increase in the minimum age for cohabitation for girls is considered undesirable but because interference of law in such matters is resented and molestation by Police is apprehended. As since the amendment of the law no instance of such molestation appears to have occurred in these parts and the public have no cause to be dissatisfied with the present law.

2. An advance on the present law can only be justified on the ground that there is no reason for fixing two different age limits one for connection within marital state and the other for that outside it. But as cases of rape of husband upon wife are very few, in fact none has come to light in this part of the country, there is no reason to agitate a people who considers such legislation as invasion on their religion.

3. Seduction cases are reported here now and then though not very frequently. Rape cases are very rare. Still the raising of Age of Consent to 14 years has reduced the chance of escape for the culprits. I think the present state of law is quite effective.

4. I do not think the amendment of law has conduced much towards bringing about the effects mentioned. Among lower classes child marriage still prevails, but the girls are seldom taken to their husband's families before they are grown up and helpful, on account of their pecuniary condition. Among the higher castes economic condition and large demands of dowries and the tendency to give education to girls have brought a general rise in their age of marriage beyond 13 years. So it is not necessary to provide any legal step to bring about this effect.

5. Among the higher castes girls attain puberty generally between 12 and 13. Among lower castes it is a little higher.

6. Cohabitation before puberty is not common and before the girls complete 13 years is very rare. No such case has come to court here.

7. No, if there is any such religious injunction, it has become obsolete long ago.

8. Gaona is performed still, but people are generally doing away with. Gaona has no connection with attainment of puberty. It is the taking of the bride to her father-in-law's place with certain ceremonies. As this involved a pretty large expenditure many people could not send the girls for a long time after marriage. Now, as the girls among the higher classes are married when they are pretty grown up, the Gaona ceremony is done away with so that the girl can go to her father-in-law's place at any time.

Garbhadhan ceremony is connected with attainment of puberty but it is now seldom performed.

9. I think consummation of marriage is desirable when girl is 15 years old and not before. This, I think, is now generally the case on account of the reasons mentioned in answer to question No. 4.



10. At the age of 14 years.

11. No.

12. Yes, to a certain extent. As various other causes, *e.g.*, economic stress, prevalence of Malaria, etc., are also greatly responsible for these effects, people are apt to attribute them entirely to these causes; but the injurious effect of early maternity cannot be belittled.

13. *Vide* my answer to question No. 4.

14. The views of women among the educated classes have changed and they do not favour early consummation of marriage for their children.

15. The difficulties arise on account of want of genuine horoscope or any other document evidencing age; and the medical opinions are but approximations. I would suggest that register of births should be more carefully written with details and preserved.

16. To some extent it may minimise the margin of error.

17. For marital offences the punishment should be very slight except in cases attended with serious injuries on the person of the girl. So marital offences should be divided into two classes. For a simpler offence a fine should be sufficient. For the aggravated offence, the maximum punishment may be half of that for extra-marital offence.

18. The offence within the marital offence should be tried in camera.

19. As I am not aware of any such instance, I do not think any safeguard is at present required.

20. Public opinion will be strongly against fixing a minimum age for marriage. I do not therefore think any attempt towards legislation in this line is desirable.

21. I would refer to rely on the progress of social reform by means of education and social propaganda.

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**Written Statement, dated the 5th August 1928, of Dr. H. C. SYNGE THOMPSON, M.R.C.S., L.R.C.P. (London), Hospital of the Epiphany, Kamdara P. O., Ranchi District.**

I write to inform you that in my medical experience of 4 years among the aboriginal tribes of Kamdara District, I have found no cases of child marriage nor of its evil consequences. The Christians do not marry until the age of 16 or 17 and the non-Christians at about the same age. Cases of rape have not come into my experience nor any other such Police Court Cases.

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**Written Statement, dated the 9th August 1929, of Rai Bahadur MURALIDHAR RAY CHAUDHURI, M.A., Deputy Magistrate and Deputy Collector, Hazaribagh.**

1. There is no dissatisfaction visible among the public. As a matter of fact the change in the law made in 1925 is hardly known to the public at large yet. Even among the educated classes a very few people have a correct notion of the alterations made.

2. Until a girl has completed her 14th year she deserves to be protected by law from the lust of her husband. This is necessary for the sake of the girl's own health as well as for that of the race. There is no doubt that cohabitation below 14 years of age with a grown-up man often works havoc with the girl's constitution and in consequence she brings into being a race of physical weaklings. Even 14 is probably too early for cohabitation without risk of injury to the girl or her progeny. But as the majority of

the girls menstruate between the ages of 13 and 14, 14 ought to be fixed as the Age of Consent within the marital state.

Pandit Madanmohan Malaviya, the acknowledged leader of the Hindu Maha Sabha, said in his Minute of Dissent on the Report of the Select Committee on the Age of Consent Bill in 1924:—

"I am also in agreement with the view that even a person to whom a girl has been married should not consummate the marriage until the married girl has completed her 14th year.

\* \* \* \* \*

There is a widespread idea among the people that a young woman becomes fit to live with her husband as soon as she begins to menstruate. I agree with the opinion that this is a wrong idea. I myself think that a woman should live with her husband only after she has completed her 16th year."

Personally speaking, I am entirely in accord with the above view. But in consideration of the widespread idea referred to above and of the 'religious belief prevalent among a considerable section of the people that it is the duty of a husband to live with his wife after she has begun to menstruate', I would fix the Age of Consent at 14, prior to which age it should be considered a crime for the husband to violate the chastity of his wife. Conception after 14 will not be so ruinous to the health of a girl or her progeny as conception before that age when the girl is generally too immature for healthy conception.

A girl deserves also to be protected against outsiders up to the age of 16, both for her own sake and for the sake of the society in which she lives. A girl remains physically and intellectually immature, until she has completed her 16th year, to give a valid consent in such a serious matter as the selling away of her chastity. After 16 she ought to be able to guard her own chastity.

The Age of Consent within the marital state should therefore be raised, in my opinion, to 14, and outside the marital state to 16, as proposed in Sir Hari Singh Gour's Bill.

3. Crimes of seduction and rape are not uncommon. Rape by a husband is rare, and even if there be any instances these do not come to Court. During my 32 years' experience as a Magistrate in Bengal, Bihar and Orissa, I have not yet come across a single prosecution of a husband for rape on his wife. The amendment of the law made in 1925 has had no appreciable effect on the number of cases of rape and seduction, first because those who commit such crimes do so under the influence of an uncontrollable sexual obsession and seldom trouble themselves about the age of the girl who happens to be the victim of their passion, and secondly because the amendment of the law has not had a sufficiently long trial yet and is hardly even known to the public at large. The only thing that can effectively keep such crimes under check is a general raising of the moral standard among the people by the spread of education.

Although legislation may not improve matters immediately, still in my opinion legislation is necessary to afford protection to young, helpless, and immature girls against the lust of husbands and outsiders. As Mr. Sarda has said, "Where a social custom or religious rite outrages our sense of humanity or inflicts injustice on a helpless class of people, the Legislature has a right to step in".

4. The amendment of the law has produced no appreciable effect yet in the directions mentioned. Of course the marriage age of girls is gradually rising everywhere, especially among the higher classes, through the spread of education, relaxation of the rigidity of custom owing to the advent of new ideas, and social necessity. The change in the law, however, is scarcely even known to the public at large yet.

5. The usual age at which girls attain puberty is 12 to 14, the majority menstruating between 13 and 14. There is hardly any appreciable difference

in this matter among the different castes, communities, or classes. Girls of the leisured classes who are well-fed and live in artificial environments probably menstruate a little earlier than other girls, may be by a few months.

6. Cohabitation before puberty is not common. Cohabitation soon after puberty and before the girl completes 13 years is not altogether uncommon. The reason is the sanction of custom and the beliefs prevalent among the people to which I have already alluded in my answer to question 2. These uses, however, seldom come to court.

7. If there is any consummation of marriage before puberty, it can never be due to religious injunction. It is entirely due to the lust of the husband. There is no religious injunction that I know of, among persons of any religious faith, to consummate marriage before puberty. There is a widespread religious belief, however, in Bengal (but, as I am told, not in Bihar) that a husband should consummate marriage as soon as the wife has begun to menstruate. There is probably no sure basis in the Shāstras for such a belief, for so far as I know the scriptures do not enjoin consummation of marriage at the very first sign of a girl's puberty, and as a matter of fact, in practice, we find the "Garbhādhān" ceremony (which is the ceremony for the consummation of marriage) being celebrated in Bengal not always at the first menstruation of the girl but in many cases at any subsequent menstruation when it may suit the conveniences of the parties to do so. Efforts no doubt are made to celebrate this ceremony at the first menstruation if possible, but no religious or social blame or penalty attaches to the failure to perform it at the very first sign of puberty.

8. "Garbhādhān" ceremony is usually performed in Bengal as soon after the first appearance of a girl's puberty as possible, and generally coincides with the consummation of marriage. But it is not essential that it must be performed on the very first appearance of puberty, and no social or religious penalty is incurred if it is delayed by a few months or a year. This ceremony is not performed in Bihar. On the other hand the "Gaonā" ceremony which is performed in this Province has no connexion with the idea of consummation of marriage. It is purely a "dwirāgaman" ceremony or the ceremony of the bride's home-coming, and is as often performed before as after the girl's puberty.

9. The attainment of puberty is not a sufficient indication of a girl's physical maturity to justify cohabitation. "Menstruation after all is not a sign of bodily maturity, it is in most cases merely a sign of puberty and ovulation with a possible pregnantability or capacity to conceive", but it is most certainly not an indication of a girl's fitness for healthy conception. The case of the attainment of puberty by a boy should also be compared in this connexion. Nobody will ever question that a boy does not become fit to procreate as soon as he attain puberty or that a boy should not be allowed to cohabit until long after puberty. Even so with the girl. She should wait at least till she reaches the age of 16 if she is to enter into motherhood without injury to her own health or to that of her progeny.

I may here quote the two following texts from *Susruta* in support of my statement:—

- (1) "Ūnashōrasavarshāyā-maprāptāḥ pañcavīṁsatim Yadyādhatte pumān, garbhān, kukshisthah sa vipadvate, Jāto vana chiram jīvejjīvedvā durbalendriyah. Tasmādatyantabālāvām garbhādhānam na kārayet".

—*Susruta Sāmrasthānam*, Chapter X, Verse 42.

- (2) "Pancharimśe tatō varṣhe pumān, nārī tu shōmśe, Samatvāgataviryān tau jāniyāt kusālō bhishak".

—*Susruta Sūtrasthānam*, Chapter XXXV, Verse 9.

*English Translation.*

(1) If a man who has not attained the age of 25 impregnates a girl below 16 years of age the foetus is endangered in the womb, if born the child will not live long, if it lives it becomes a weakling, hence a man must not impregnate a too immature girl (i.e., one below 16 years).

(2) A clever physician ought to know that a man of 25 and a woman of 16 have their *virgum* balanced or equalised, i.e., have become both fully developed.

10. At the age of 16 a girl in India is generally developed enough to be able to give an intelligent consent to cohabitation and to know the consequences of such consent.

11. The evil effects of cohabitation by a girl soon after puberty and before full physical development and of her consequent conception at a very early and immature age, both on her own health and on the health of her progeny, are to be seen everywhere, and such cases are too numerous to be mentioned. Instances may be taken from almost every Indian family. The appalling death-rate from tuberculosis in India is also attributed by competent authorities to the early consummation of marriages.

12. Early maternity is certainly one of the factors responsible for high maternal and infantile mortality, though it may not be the chief factor. It has certainly prejudicially effected the physical progress of the people if not their intellectual progress. I may here quote from the Census Report of 1921:—

“Studies of the statistics of countries of the world show that there is a close correlation between the rate of infant mortality and the size of the family, owing to two distinct sets of factors, physical and economic. On the one hand the vitality of the mother and through her the life of the child appear to be affected by the age at which child-bearing begins, the number of births (or pregnancies), and especially the spacing of births; on the other hand the health of the infant is closely allied with the circumstances frequently associated with large families, namely, poverty, congestion, mal-nutrition, insanitary surroundings, and the improvidence and ignorance of the parents..... Special causes contribute to the high mortality of infants in India. Owing to the custom of early marriage, cohabitation and child-birth take place before the woman is physically mature, and this combined with the primitive and insanitary methods of midwifery seriously affects the health and vitality of the mother and through her of the child. . . .”

13. No further development of public opinion in this matter has taken place since 1925. As noted before, the amendments of 1925 are hardly yet known to the people at large, and sufficient time has not yet elapsed since the passing of the amendments to produce any tangible effect on the social life of the people.

14. No woman ever desires that her son or daughter should cohabit at an immature age. She is only compelled to bow down to custom.

15. Not unoften difficulties are experienced in determining the age of the girl, and too much reliance has to be placed, in the absence of other evidence, on medical evidence alone which after all is frequently found to be vague and indefinite. The only feasible measure likely to reduce these difficulties that suggests itself to me is to maintain the Birth Registers more accurately. At present these registers, outside the Presidency towns, are written up haphazardly and without any attempt at accuracy by the Police of each Thana from reports brought in by the village Chaukidars on their weekly parade days. There is no kind of control or check exercised over the reports of the Chaukidars, so that mistakes and omissions are the rule instead of being an exception. It will not be difficult for the Government to provide for an effective check being exercised over the Chaukidars' reports of vital statistics by responsible police or other officers so as to ensure the correct maintenance of the Birth Registers. The best evidence of age will then be afforded by an entry in these registers.

16. Not in my opinion unless the age be raised very high, say to 18. External physical development is after all a very deceptive factor in determining age, especially when a girl is at the period of transition from girlhood to youth.

17. I should like to separate the two offences and place them under two different sections as has been done by Sir H. S. Gour. In section 376-A., the age limits should be 12 and 14, and not 13 and 14 as proposed by Sir H. S. Gour, for a fair proportion of the girls in India (about 20 per cent.) menstruate between the ages of 12 and 13, and however much the husband's act of cohabitation with any one of them may be condemned as offending against humanity it will be looked upon by the public more as an act of indiscretion than as anything else and as such it ought to come within the category of the lesser offence under section 376-A. Any violation of a minor wife below 12 deserves to be treated absolutely as rape, pure and simple, but the violation of a girl-wife between the ages of 12 and 14 should, I think, be treated as a lighter offence under section 376-A. In my opinion, therefore, the amendments should be as follow. In section 375. Cl. Fifthly, the words "or without" should be deleted being redundant and the word "fourteen" changed to "sixteen". In the exception to the same section the word "thirteen" should be changed to "twelve". Then there should be a separate section 376-A., as proposed by Sir H. S. Gour with the word "twelve" substituted for "thirteen".

Corresponding amendments are to be made in Schedule II of the Criminal Procedure Code.

No change is required in the existing punishments.

18. The procedure suggested by Sir H. S. Gour may stand, only I would make an offence under section 376-A., "compoundable with the permission of the Court", in order to afford an opportunity for the restoration of good feelings between the parties and their families by means of compromise in cases in which no serious physical injury has been inflicted on the girl by the act of cohabitation, especially in view of the fact that the Age of Consent will be put so high as 14 before which age most of the girl will have attained puberty.

19. No further safe-guards seem to be called for. A false prosecution will render the prosecutor liable under section 182 or section 211, Indian Penal Code, and a false and frivolous or vexatious prosecution will also be punishable with compensation-fine of Rs. 100 under section 250, Criminal Procedure Code.

20. Legislation fixing a minimum age of marriage will certainly be much more effective than any amount of penal legislation fixing a higher Age of Consent without at the same time forbidding child marriages, for the former aims at the root of the mischief while the latter merely provides for punishing a mischief after allowing full opportunities for its commission. But I hardly think public opinion in the country is ripe yet for such a revolutionary social change as the fixing of the age of marriage for boys and girls by means of legislation, however much such a course may be deemed by some to be urgently required in the best interests of the race. In the present state of the public opinion, therefore, I think the only sensible course would be to raise the Age of Consent to 14 by an amendment of the Penal Code.

21. In a matter of such vital importance to the race, when all classes of the educated public, orthodox and unorthodox, are agreed in characterising this grave social evil as a crime against humanity, I would not wait for the social sense of the country to develop slowly by means of education and social propaganda before casting it off. The reform of the evil is long over-due, and the sooner the Legislature will recognize the right of the woman to refuse to submit to the lust of her husband before she becomes physically and mentally fit for sexual intercourse the better it will

be for all. Where men legislate they naturally legislate in a way favourable to themselves at the expense of the women whom they have been accustomed through long ages to treat as their chattel. If the women had any hand in the legislation of the country, I am sure this reform would have been effected long ago.

**Written Statement, dated the 23rd December 1928, of Mr. KARALI PROSAD ROY, Suri (Birbhum).**

I am in favour of enhancement of age for marriage both amongst girls and boys. I cannot attribute the practice of early marriage to religious injunction. Pandits hold different opinion about it. The chronic state of poverty will greatly decrease if the minimum age of marriage is fixed at fourteen at least for girls and twenty-two for the boys. Fixing of minimum age of marriage would be more effective than raising the Age of Consent. Men of poor classes of inferior caste and society are in favour of early marriage but it is purely a mistaken idea on their part which is due to want of education amongst them. As the lower class people marry their daughters at the age of seven to ten I think twelve or eleven may be fixed as the minimum marriageable age for the girls of this class only but the Age of Consent should be enforced in this class and must be thirteen. The women of the lower classes are not generally of good character for various reasons and the law for them therefore cannot be equal to Bhadra class gentlemen. I am not in favour of divorce system but the law must compel the husbands to treat their wives like gentlemen and according to religious ideas and the wives in turn must be ideal and exemplary as generally they are. The dowry demand should not be exorbitant and the parents of boys known as gentlemen in societies should not behave like ferocious and sanguinary barbarians towards parents of girls at marriage time.

**Written Statement, dated the 4th September 1928, of Pandit ISHWARI DUTT DOURGA DATTI SASTRI, M.A., M.O.L., Principal, Government D. S. Sanskrit College, Muzaffarpore, Pandit ANANTA MISHRA, M.A., and Pandit BUDHI NATH JHA, Professors, D. S. Sanskrit College, Muzaffarpore.**

1. As a matter of fact, the present law of the Age of Consent does not appear to be so much known to the people. It is, therefore, difficult to say whether there is or is not any dissatisfaction with the state of the law in question.

2. The following are the circumstances under which we favour the retention of the present law of the Age of Consent:—

- (a) The most deplorable condition of health of the majority of males and females in India.
- (b) High maternal and infantile mortality.
- (c) Immature deaths of males.

3. In our part of the country, the crimes of seduction or rape are not so frequent. The amendment of the law made in 1925 raising the Age of Consent to 14 years, has not—in our opinion—succeeded so much in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. The law might be made more effective by making it known to the public by some such means as the publication of special papers and carrying on of public speeches and through the agency of Government and semi-Government bodies such as Local Boards, Union Boards, etc.

4. The amendment raising the Age of Consent within marital state to 13 years, appears to have been to some extent, effective in preventing cohabitation of such girls as are within 13 years of age and have not attained puberty.

5. The usual age at which girls attain puberty in our part of the country, varies according to their belonging to the working, and non-working classes; and to their living upon rich, average and below average food and also according to different climatic conditions in which they breathe. However, between 12 and 14, girls attain puberty in our part of the country.

6. Yes, it is common among all classes of people soon after puberty. But such cases scarcely come to court.

7. So far the practice of early consummation of marriage soon after puberty is concerned, we attribute it to religious injunctions for which authorities are given in Schedules attached to the joint opinion of the professors of Dharm Sastra forwarded herewith.

8. The same as ventilated in the joint opinion of the professors of Sanskrit Shastras forwarded herewith.

9. No, at the age of fourteen, a girl's physical development may in normal cases, be considered to be enough to justify consummation without injury to her own health or that of her progeny.

10. At sixteen.

11. There are many cases of this nature but we can give the details of age and injury sustained in one case only which has very recently occurred. The age of the girl was only 12 years while that of the bridegroom sixteen. The result of cohabitation was a disfigured and defaced male issue that could not survive more than a few days. The mother has lost her health forever and the poor youthful husband is in search of a second wife to add to the former's further misery.

12. Yes, certainly.

13. There is some development of public opinion in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. But it is confined only to some of the non-orthodox sections of the community.

14. No, never.

15. Difficulties naturally arise in determining the age of girls in connection with offences under sections 375 and 376. But these can only be removed or minimised by fixing the minimum age of marriage. But in this connection, the dreaded police should have no hands. Respectable honorary local bodies should be appointed and entrusted with the task of giving due sanction to marriage of girls and boys under their limited jurisdiction after making local enquiries of a civil nature in each case.

16. No, not possible.

17. There is a conspicuous difference in the very nature of the both—marital and extra-marital offences, as the former seems to have no motive of doing any injury to his wife whereas the latter has got the bad motive of satisfying his lust at the cost of her chastity and physical well-being. That is, in one case the offender is a civil thief while in the other he is a high-way-man. Hence there should be some difference in the offences of both kinds and in their trials. The maximum punishment as laid down in sections 375 and 376 is enough for both—the marital and extra-marital offences.

18. Yes, we would. And in our opinion, the trials of both kinds should be differently conducted through the Government courts in extra-marital offences and through an honorary local body consisting of respectable personages of that neighbourhood where the case may originate—the body being vested with necessary powers with respect to marital cases alone.

19. None.

20. In our opinion, legislation fixing the minimum age of marriage would be far more effective than penal legislation fixing a higher Age of Consent for marital cases as in the latter case, it is absolutely impossible to protect a married couple living together against cohabitation and to discover the crime if committed. The second alternative in the questionnaire would probably be in consonance with public opinion in our part of the country.

21. Had there been a guarantee that the progress of social reform by means of education and social propaganda would secure the object in view in a near future we would have relied upon that. But as there is none, so we would better rely on the strengthening of the penal law for the time being.

#### SCHEDULE A.

The following are the imperative injunctions with regard to sexual intercourse being necessary at menstruation.

1. The sage Parasara says:—

**“ऋतुकालाभिगमनं पुंसाश्चर्यं प्रयत्नतः ॥**

A man should go to his wife without fail at menstruation.

2. Manu and Yajnavalkya say:—

**षोडशतृनिशाः स्त्रीणां तस्मिन् युग्मसु संविशेत् ॥**

There are sixteen nights of menstruation for women and one should have intercourse with one's wife in even nights.

3. The author of Mitakshara holds:—

**ऋतौ भार्यामुपेयादेव**

One must go to one's wife during menses.

4. The sage Vyasa says:—

**स्नातां चतुर्थ दिवसे रात्रौ गच्छेत् विचक्षणः ॥**

When a woman has taken her bath (on the fourth day) of her menstruation, a wise man should go to her at night.

5. “Brihaspati” says:—

**ऋतु कालाभिगमनं कुर्यात्पर्वणि वर्जयेत् ।**

One should go to one's wife during menses excepting holidays.

#### SCHEDULE B.

*Sins for not having intercourse after menstruation.*

1. The sage Vyasa says:—

**ऋतुस्नातांतु यो भार्यां सविधीनोपगच्छति  
घोरायां भ्रूणहत्यायां पतते नात्रसंशयः ॥**

One, who being close to one's wife, does not go to her after she has finished bath at puberty, one falls in the horrible sin of killing embryo doubtlessly.

2. Again the sage “Parasara” ventilates exactly half of the above couplet and further adds in another line:—

**सगच्छेन्नरकं घोरं ब्रह्महृति तथोच्यते ॥**

i.e., he goes to a most dreadful hell and is said to be the killer of a Brahmana.



3. The sage "Yama" similarly preserving the 1st line of (I) further adds in the second line:—

**घोरायां भ्रूणहत्यायां पञ्चतेमात्र संशयः**

i.e., he is tormented by the most heinous sin of killing embryo without any doubt.

and also:—

**भार्यामृतमुख्यस्तु सन्निधौ नोपगच्छति**

**पितरस्तस्य तन्मासं तस्मिन्निर्नसि शेरते ॥**

He, who being close to his wife, does not go to her at the beginning of menstruation his "pitis" or forefathers sleep in that semen in that month.

4. Again "Deval" says:—

**यस्तुदारानृतुस्नातान् स्वस्यः सन्नोपगच्छति**

**भ्रूणहत्यामवाप्नोति गर्भं प्राप्य विनाशयस' ॥**

One who being in health, does not have intercourse with one's wife who has just taken menstrual bath, he commits the sin of killing embryo (for) not utilising opportunity for begetting a child.

#### SCHEDULE C.

The following are the authorities on the propriety of giving away daughters in marriage before they attain puberty.

1. Bondhayana in Samskaramayusa says:—

**दद्याद्गुणवते कन्यां नग्निकां ब्रह्मचारिणी**

**अपिवागुणहीनाय नोपरूढ्याद्रजस्वलाम् ॥**

One should give away one's daughter before (her) menstruation to a meritorious Brahmachari or even to a man void of any merit, but one should never keep unmarried a girl after her menses.

2. "Sambarta" says in "Apararka":—

**माता चैव पिता चैव ज्येष्ठभ्राता तथैवच**

**त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ।**

Mother, father and elder brother too, all these three go to hell by seeing their unmarried girl in menses.

3. "Harit" says:—

**पितुर्गृहे तु या कन्या रजःपश्यत्यसंस्कृता**

**सा कन्यावृषलीज्ञेया तत्पतिर्वृषलीपतिः ॥**

The girl who has menses at her father's house before marriage, she is to be known as a Vrishali (or Sudri, the lowest caste) and her husband (shall be) the husband of such.

4. Again Deval says :—

भ्रूणहत्या पितृस्त्रियाः सा कन्यादृषलीकृता  
यस्तां समुद्देकन्यां ब्रह्माणोज्ञानदुर्वलः  
अत्राह्वयमपाङ्गलेयं तंविद्यादृषलीपतिम् ॥

Her father commits the sin of killing embryo and she herself is known to be a " Vrishali ". Hence the Brahman who, being deficient in knowledge, weds her, is to be known as the husband of a Vrishali and is ex-communicated and unworthy of invitation to a Shradha ceremony.

5. Again " Sambarta " says :—

अष्टमेतु भवेत्तौरी नववर्षातु रोहिणी  
दशमे दन्यका प्रोक्ता द्वादशे वृषली भवेत् ॥

At the 8th year (of her age) a girl becomes Gouri, at ninth Rohini, at tenth Kanyaka, but the age of 12, she becomes a Vrishali.

6. Again " Yama " says :—

अष्टवर्षाभवेत्तौरी नववर्षातु रोहिणी  
दशवर्षा भवेत्कन्याअतऊर्ध्वं रजस्वला ॥

An eight-year old girl is Gouri, at nine Rohini, and at ten, she is a Kanya; above it she is a Rajaswale, i.e., in menses.

And also—

प्राप्ते द्वादशकवर्षे यः कन्यां न प्रयच्छति  
मासि मासि रजस्तस्याः पिता पिवति शोणितम् ।

One who does not give away one's daughter in marriage at the 12th year of her age, the father of the bride drinks blood every month.

Again " Yama " says in Purushartha Cintamani :

तस्मादुद्वाहयेत् कन्यां यावच्चतुर्मतीभवेत् ।

Hence get your daughter married before she has menstruation.

Again " Yama " says in his " Udbahatatva ".

कन्या द्वादशवर्षाणि याऽप्रदत्तागृहेवसेत्  
ब्रह्महत्या पितृस्त्रियाः सा कन्या वरयेत् स्वयम् ।

The girl who resides at her father's house for twelve years (being) not given away (by her father). Her father commits the sin of killing a Brahman and that girl should choose a husband for herself.

(The authorities are translated by and are in the handwriting of Pandit Ananta Mishra, M.A., Government D. S. Sanskrit College, Muzaffarpur.)

**Translation of Written Statement of Pandit MUKANDA JHA BAKSHI, Professor of Karmkand, Government D. S. Sanskrit College, Muzaffarpore.**

1. The cause of dissatisfaction in it, is the possibility of violating the following dictates of the Dharma Shastras and thereby incurring the worst sins such as are acquired by causing miscarriage and similar crimes by avoiding the consummation in the case of a healthy person when the wife

attains puberty on account of the punishment prescribed by the law. So my opinion is this that the age of the males should be not less than 16 years, as, up to the 16th year one is of tender age, there is the gradual formation of semen in the body and the dealing with it (by cohabitation with wife) is the prime cause of great calamity. After that, beginning with the 18th when the youth comes in, the marriage should take place. The marriage of girls, being in the place of Upanayana (the vesting of sacred thread) in the case of Brahmana, Kshatriya, and Vaishya should take place between 8 to 12 years according to the dictates of the Dharma Shastras because the Smriti of Yama enjoins a great sin if a girl is not given in marriage up to the 12th year of age, *e.g.*, one who does not give away his daughter when the 12th year comes in (he), the father drinks the blood of the monthly course every month.

Before that, when the sign of puberty may begin to appear, at that time (whether the girl be of any age, less than 12 years), the marriage must take place, as the donor, donee and the girl as well are censured to the extreme in the case of the gift of such girls as have attained puberty.

As to the fact that the marriage stands in the place of Upanayana in the case of twice-born ones (Brahman, Kshatriya and Vaishya) we have as authority the texts of Manu, Yajnavalkya and others and consequently the marriage for a second time (*i.e.*, widow marriage, etc.) is never allowed by the Shastras. Wherever it exists, it cannot be called a marriage but the decision of the Shastras is that it is to be classified as (the acceptance of) "Punarblu" and so in Sudras, the lower class of people give away their daughters in marriage when they are of quite tender age, as the subsequent marriage often takes place in them. But the consummation of marriage never takes place in them before the 14th year and as a proof against that is the custom of "Gaona" taking place just about that very time and after it. If that (very) custom is adopted by the twice-born classes under social bindings, the sections 375, 376 of Indian Penal Code would be followed effectively and the public would also be quite satisfied as the limit of the dictates of the Dharma Shastras will be protected.

In our part of the country there is not any particular age in which girls, invariably attain puberty. But generally it happens only after ten years and that also depends upon climate and the object of food used and hence in certain cases there is no monthly course even up to 14th year. In certain cases it happens in the 10th year even owing to the nourishment of the body and soul.

Hence Manu has also fixed the marriageable age of girls between 8 to 12 years and that of the boys three times or two times and a half the age of the girls. Similarly other Smritikaras have also fixed the age of the boys according to the age of the girls. But these days only the two-times should be thought proper but not less than that. It is also written (in the Shastras) "The (age of the) Bridegroom should be twice (that of) the bride."

7. The religious injunction as a source of the practice of consummation of marriage just after puberty has already been written in answer to the first question, as to that before puberty the injunctions of Manu and other Smritis and as well as of Kalpa Sutras and Grhyasutras are mostly found when both the husband and wife are of age and healthy ones and the wife intends to have cohabitation.

8. Though "Gaona" and Garbhadhana ceremonies are common they have no connection with the consummation of marriage in the case of twice-born ones (*i.e.*, Brahmana, Kshatriya and Vaishya) as it has been ordained to cohabit even before Gaona if the spouse is healthy and of suitable age and the wife intends to have it, *i.e.*, the Gaona takes place before or after the Garbhadhana. In lower classes (*i.e.*, in others than twice-born ones) there is not the practice of consummation of marriage or Garbhadhana before Gaona and the Gaona usually takes place on the attainment of an age suitable for conception and not before. Although taking this practice to be the best and a beneficial one, I wish to keep it under social binding only.

10. The girls in India know it full well when the time of consummation comes in according to the difference of climate or education. In most cases they realise after attaining puberty.

13. It has developed in educated circles only. The commoners are not fully aware of it and the large number of uneducated ones are responsible for it.

14. No.

17. We take the extra-marital cohabitations quite censured by our Shastras. The punishment in the case of improper cohabitation within marital relation has already been passed in the sections of Indian Penal Code. We rather want to reduce it and also want that such legislations be made that such sections (that go against the Shastras) should never be allowed to be brought forward for enactment.

21. We like to rely on the social organisation and the progress of social reform by means of education in order to attain the end as stated above according to the Shastras.

याज्ञवल्क्यस्मृति ।—“षोडशर्तुर्निशास्त्रीणां तस्मिन् युग्मासु सन्विशेत्”  
ब्रह्मसूत्र ।—“ऋतुकालाभिगमनं कुर्यात् पर्वाणि वर्जयेत्” ।

पराशर ।—ऋतुकालाभिगमनं पंसा कार्यं प्रयत्नतः” ।

गोभिलगृह्यसूत्रम् ।—“यदर्तुर्मतीभवत्युपरत शोणिता तदा सश्व  
कालः” ॥

पार-गृह्यसूत्रम् ।—“तामुदुह्य यथर्तुं प्रवेशनम्” ।

इस प्रकारके वचनों को विरुद्ध विधिप्राप्ति विलम्बेनापि भाविनी इत्यादि मीमांसा कथित रीतिसे “प्रमाणान्तराज्ञात ज्ञापक रूपत्व” पूर्व विधित्व न होनेसे “ऋतानुपेयादेव” एवं प्रकारके नियम विधि ही मित-चरादिकमें सिद्धान्त किये जानेसे नियमविधिको नित्य विधिके तुल्यहोते उस आवश्यक कर्मके न करनेसे “अकुर्वन्वाहितं कर्मनिन्दितश्च समाचरन् । प्रसजंश्चेन्द्रियार्थेषु प्रायश्चित्तीयते नरः” इस मनुवचनको अनुसार प्रायश्चित्ती होना पड़ेगा । और वह प्रायश्चित्त “ऋतुप्राप्ता तु यो भार्या सन्निधौ नोपगच्छति । घोरायां भ्रूणहत्यायां पतते नात्र संशयः १” ऋतुप्राप्ता तु यो भार्या सन्निधौ नोपगच्छति । स गच्छेन्नरकं घोरं ब्रह्महेति तथोच्यते १’ । ऋतुप्राप्ता तु यो भार्या सन्निधौ नोपगच्छति । घोरायां ब्रह्महत्यायां पश्यते नात्रसंशयः १ भार्यामृतमुखेयस्तु सन्निधौनोपगच्छति । पितर-स्तस्य तन्मासं तस्मिन्नूर्तसि शेरते २” “यस्यदाराऋतुज्ञातान्स्वस्थःमन्नाप-सर्पेति । भ्रूणहत्यामवाप्नोति गर्भप्राप्य विनाशयः” । इन व्यास—पराशर—यम—देवल—के वचनोंसे भ्रूण(गर्भ) हत्याके समान वो ब्रह्महत्याके समान समझा जाता है । ऐसो दश में ११ वं आदि वर्षों में रजोदर्शन होनेपर

पुरुष को स्वस्थ तथा सन्निहित रहकर प्रसङ्ग न करने से बड़ा ही अनर्थ बड़ा पूर्वोक्त होगा ॥

(२) आयुर्वेद (वैद्यक) में लिखा है कि “आषोडशादृष्टि—रापञ्चविंशते-  
र्यौवन—माचत्वारिंशतःस्थिरता ततःकिञ्चिक्लासः । यानि शुक्रको इसप्रकार  
मनुष्य के शरीर में वृद्धि वो क्लास वयःक्रम से हुआ करता है ॥

(१) मनु “गर्भाष्टमेऽष्टे कुर्वन्ति ब्राह्मणस्योपनयनम् । गर्भादिकादशे राज्ञो-  
गर्भात्तु द्वादशे वेशः ॥ १ ॥ अषोडशाद्ब्राह्मणस्य सावित्रीनातिवर्तते  
आद्वाविंशाच्छत्रवन्धोराचतुर्विंशते विशः ॥ २ ॥” यज्ञवल्क्य ।—आषोडशा-  
द्द्वाविंशाच्चतुर्विंशाच्चवत्सरात् । ब्रह्मक्षत्रविंशकाल औपनायनिकः परः ।  
पारस्करगृह्य—“अष्टवर्षे ब्राह्मणमुपनयेत् गर्भाष्टमे वा, एकादशवर्षे राजन्य  
द्वादशवर्षे वैश्यं यथामङ्गलं वा सर्वेषाम् । गोभिलगृह्य—गर्भाष्टमे वा ब्राह्मण  
मुपनयेत् । गर्भेकादशेषु क्षत्रियं, गर्भद्वादशेषु वैश्यम् । आषोडशद्वर्षाद्  
ब्राह्मणस्यानतीतकालो भवात्पञ्चाविंशात्क्षत्रियस्या चतुर्विंशाच्च वैश्य ॥ ४ ॥

(२) अन्नकाश्यपौ ।—पितृजेहेतु या कन्या रजःपश्यत्यसंस्कृता । भ्रूण-  
हत्यापितृस्य सा कन्या वृषलीसृता ॥ यस्तुतांवरयेत्कन्यां ब्राह्मणो ज्ञान-  
दुर्वलः । अश्रापेयमयाङ्गेयं तं विद्याद्वृषलीपतिम् ॥ इति ॥

(३) मनु-याज्ञवल्क्यौ ।—वैवाहिको विधिविस्त्रोणामौपनायनिकः स्मृतः ।

पतिसेवागुरौ वा सोऽग्नौ हार्योऽग्निपरिक्रिया ॥

औपनायनिकः—उपनयनतुल्यः ।

(४) नान्यस्मिन्विधवानारो नियोक्तव्या द्विजातिभिः ।

अन्यास्मिन्विधुञ्जानाधर्मं हन्युः सनातनम् ॥

“नोद्वाहिकेषु मन्त्रेषु नियोगः कीच्यते कश्चित् ॥

नदिवाहविधावुक्तं विंधधवावेदनम्युनेः ॥ ६५ ॥ (आ- ८)

(१) मनुः “त्रिंशद्वर्षोऽष्टेत्कन्यां द्वादशाद्वादशवार्षिकीम् अष्टवर्षोऽष्टवर्षां वा  
धर्मेऽसीदति सत्वरः ॥

(२) मनुः—ऋतुकालाभिगामोऽस्यात् स्वदारनिरतः सदा । पर्ववर्जं ब्रजेश्वरं  
तद्गतो रति काम्यया । (३।४५) इसमें तद्गतोरतिकाम्यया का  
अर्थ मन्वर्थमुक्तावलो आदिकर्मे ‘सा भार्या प्रोतिव्रतं यं स तद्गु-  
तोऽनृतावय्युपेयात् । अतएव रतिकाम्ययानतु पुत्रीत्यादन शास्त्र-  
बुद्ध्या । तस्माद्विधित्रयमिदम् । ऋतावुपेयादेव १—अन्यभार्या

जोपगच्छेत् २—अनृतावपिभार्याप्रीतये गच्छेदिति ३—यहां गौतम का वचन है कि “ऋताकुपेयादनृतौ च पर्ववर्जम्,” याज्ञवल्क्य भी लिखते हैं यथाकामीभवेद्वाऽपिस्त्रीणावरमनुस्मरन् स्वादार निरतश्चेव स्त्रियोरक्ष्मा यतःस्तताः, (१।८१) यद्वा पर्ववर्जम् यह ऋतु अनृतु साधारण है। पारस्कर गृह्यसूत्र में भी “तामुदुह्य यथर्तु-प्रवेशनम्। ७ यथाकामी वा काममावितो सन्भवामेति वचनात् ८ इसका अर्थ कर्कादि भाष्यो में लिखा है कि साऽनेनप्रकारेणोढा भवति तामूहाचयर्थतु-ऋताहतोप्रवेशनमभिगमनम् कुर्यात्। यथा काम वा भवत्यभिगमो न ऋताहतता-वेव। कुतएतत् प्रजापतिना हि वरोदत्त स्त्रीणां ताभिश्चतुतः कामम् इच्छया अविजनितो अविजनन (प्रसव) कालात् पुंसासहसम्भवामइति एवञ्जसति विकल्प एवायम् तथाचस्मरणम् ऋतौभार्यामुपेयात्सर्वत्र वा प्राति षिद्ध वजामिति। सर्वत्र ऋता व नृतौच। पुराणीं में इन्द्र क विश्वरूप वध से लगीहुई ब्रह्महत्याका ४ चार भाग करके ब्रह्मा ने पृथिवी-जल-वृक्ष-और स्त्रियों को दिये। उनमें मानुषियों ने अनृतुकालमें भी पति गमनेच्छासे वर मांगा है। जैसाकि श्रुति वचन है। काममाविजनितोः सन्भवाम। अतएव मानुषियों को ऋतुकाल से अन्यत्र भी पत्यभिगमनेच्छा समय २ पर हुआ करती है। उसमें स्वास्थ्य रहते (दोनोंके) अभिगमन करने का विधि है- यदि अवस्था के रहते उस स्त्री की प्रवल भोगेच्छा हो। इससे प्रवल इच्छा तथा परिणत वयःक्रम दोनों ही अभिगमनके कारण हैं। एकतर में (इच्छा रहते भी योग्य वयःक्रम) योग्य वयःक्रम रहते भी अनिच्छा में स्वपत्यभिगमनकरनाही विधि है। स्त्रीणा-कामविहन्ता पातकी स्यात्॥ ऐसा वचन स्मृति पुराणादिकों में पायाजाता है।

८ प्र०—गौना गर्भाधानको प्रथा सामान्यरूपसे प्रचलित रहनेपर भी प्रथम समागम से उसका मेल दिजातियों में नहीं है। क्योंकि गौना से पहिले भी सम्भोगयोग्य अवस्था रहने पर स्त्री की इच्छा-नुसार सम्भोग करने की आज्ञा लिखी जाचुकी है। अर्थात्

गौना गर्भाधान से पहिले पचात् दोनों हो होतो है। निम्न-श्रेणी की जाति (विजाति भिन्नो) में गौना से पहिले गर्भाधान या पति समागम नहीं होता वो गौना गर्भाधारणावस्था (यौवनोद्गम) होने पर हो होती है। पहिले नहीं। इस प्रथाको मैं उत्तम वो श्रेयस्कर समझता हुआ भी सामाजिक बन्धनों में ही रखना चाहता हूँ।

१० प्र०—भारत वर्ष में प्रान्तभेद तथा शिक्षा के विशेषता से अपना समागम समय की पूर्णतया (भलीभाँत) कन्याति जानती है। अधिक संख्या में ऋतुमती होने पर ही।

११ प्र०—इसका विकास शिक्षित श्रेणी में ही हुआ है। साधारण जनता अभी तक पूरी जानकारी नहीं करायी गयी है। इसका कारण देशमें अनपढ़ की संख्या अधिक है।

१४ प्र०—नहीं।

१७ प्र०—हम उपपति विषयक समागम को अपने धर्मशास्त्रों के अनुसार प्रति निन्दित समझते हैं। पतिविषय में अनुचित समय में अभिगमनका सजाय तो ताज़ीरात हिन्दू में पास हो ही जा चुका है। उसको कम करना चाहते हैं। और यह भी चाहते हैं। कि ऐसी सुव्यवस्था की जाय जिससे उक्त धारयें उपस्थित ही न होने पायें।

२१ प्र०—हम शास्त्र सम्मत उपरोक्त लक्ष्य की प्राप्ति के लिये सामाजिक संगठन और शिक्षा के द्वारा सामाजिक संस्कार में उन्नति करने के भरोसे पर रहना पसन्द करते हैं॥

**Authorities quoted in the Written Statement of Pandit MUKANDA JHA BAKSHI, Professor of Karmkand, Government D. S. Sanskrit College, Muzaffarpore.**

*Manu and Yajnavalkya*.—Women have 16 nights of puberty. (lit. season). In it "one must cohabit on even nights".

*Brahmana*.—"One must cohabit at the time of menses (but) must leave out Parvas (particular Tithis)."

*Parasara*.—"A man must cohabit at the time of menses."

*Gobhila-Grhyasutras*.—"When a woman in courses ceases to emit blood, then there is the time of conception." Owing to such texts the cohabitation

being ordinarily enjoyed (the injunction in the text of Manu and Yajñavalkya quoted above) has been decided to be a Niyama-vidhi (i.e., restricting injunction) in Mitakshara and others as "one must cohabit at the time of menses" because according to the Mimamsa "a Vidhi-injunction although to happen later on postpones". The said text is not an Apurvavidhi, which consists in "enjoining that thing which has not already been signified by other sources of knowledge", and the Niyama-vidhis are but Nitya-vidhis (injunctions that must be carried out) in the long run. Now as things enjoined by Nitya-vidhis must be done and by violating that one has to incur sin according to the text of Manu, etc., such as "one by not doing a thing that is enjoined and by doing a thing that is censured and by attaching himself mostly to the objects of senses, has to undergo penances.

Now in order to understand what sort of sin one incur in such cases we have:—"One who does not cohabit with a wife having monthly-course when he is near her there is no doubt that he incurs the heinous sin of killing fetus."

"One who does not cohabit with a wife having monthly-course when he is near her, he must go to deadful hell and is also called a killer of Brahmana."

"One who does not cohabit with a wife having monthly-course when he is near her he is boiled in heinous crime of killing a Brahmana."

"After the commencement of courses if one being near to his wife does not cohabit with her, his forefathers sleep in that semen (blood) for that month."

"One who is of sound health and does not cohabit with his wife who has taken bath after menses, incurs the sins of killing fetus as he loses the opportunity he has got to make his wife pregnant."

According to the above texts of Vyasa, Parasara, Yama, the sin incurred is just like that in the killing of fetus or of a Brahmana. Therefore in 11th or the successive years when the husband is near his wife, as is of sound health, if the wife has menses, there is the possibility of incurring a great sin by not having cohabitation with the wife.

(2) *In Susruta of Ayurveda*.—"Up to 16th there is increase, up to 25th youth, up to 40th stability, then a bit decrease." According to it semen is formed up to 16th it becomes perfect up to 25th and stands still up to 40th after that it begins to decrease.

(3) *Manu*.—"A Brahmana should be vested with sacred thread in the 8th year of conception (no need translating further as it relates to Upanayana only).

*Manu and Yajñavalkya*.—The ceremony of marriage stands for Upanayana in the case of females. (No need further.)

(4) *In Sanskara Dipaka*.—The texts of Atri and Kashyapa: "The girl who attains puberty before marriage in the house of her father, she is said to be a Vrishali (censured Sudra woman) and her father incurs the sin of killing fetus. A Brahmana who marries that girl is of poor knowledge and he is not to be taken in a Sraddha ceremony and not to be included in the line (in a feast) and he is said to be the husband of a Vrishali.

(5) The marriage ceremony stands in the place of Upanayana in the case of women. Service of the husband and the Guru and household duties and worship of the fire (are the only things).

(6) *Manu*.—"There is no mention of Niyoga in marital injunctions and the acceptance of a widow is not under the classification of marriages."

(7) *Manu*.—"A man of 30 years should marry a good girl of twelve years, one of 24 years should marry a girl of 8 years; the marriage should be performed as early as possible if there is any difficulty in performing necessary duties.

(8) "One must cohabit after monthly-courses, one must be always satisfied with his own wife only. One must cohabit except on Parva days if he has to satisfy her and she intends to have intercourse." "Who has the vow of satisfying her, i.e., one who has the vow of satisfying his wife should



cohabit even with courses and so it is said, "for pleasure's sake and not for having a child." Therefore there are three injunctions, (i) one must cohabit at the time of menses, (ii) one must not cohabit with other's wife, (iii) even without menses one must cohabit in order to please the wife and hence Gautama says: "One should cohabit at the time of menses and also without menses excepting the Parva days".

Yajnavalkya also says: or one should cohabit as desired thinking of the boon of women (Ch. 1.41).

*Parasara Ghyasutras*.—"Having married her one must cohabit at the time of menses or should cohabit as desired, owing to the text." May we cohabit up to the time of bearing child: Its commentary by Karkata:—After marrying her one should cohabit after every monthly-course, or the cohabitation is at will, but not only after monthly-courses; how do we conclude like that—because a boon was granted by Prajapati to women and they choose "as desired, etc." Kamana means at will; Avijanitos means up to the time of bearing child we may cohabit with males and so it is the alternative (injunction) and there is the Smriti, "One should cohabit at the time of menses or always except the Parva days."

In the Puranas it is stated that Indra once got the sin of killing Brahmana by killing Visva Rupa who was practising austerities. The Prajapati took away the sin from him and distributed it among the females, the earth, water and trees as a consolation boon was granted to the females that they may cohabit even outside the course days. Then the Prajapati also said that the offender of the desire of women would be a sinner.

In this way, a healthy husband who is desired by a wife fit for cohabitation would be a sinner if he does not cohabit if he is near to her. Such Vedic text is to be inferred. This is signified by the above Smritis.

**Written Statement, dated the 5th September 1928, of Pandit JAMUNA PRASAD TRIPATHY, Professor of Dharmasastra, Government D. S. Sanskrit College, Muzaffarpore.**

1. Yes, there is some dissatisfaction about the state of the law as to the Age of Consent as contained in Sections 375 and 376, as it is inconsistent with the injunctions of the Shastras explained in proper places.

2. So far as I think, there should be no age limit fixed as 14 or 16, for the purpose of law according to Hindu Shastras because their attaining womanhood, depends on the temperature and climate of the places concerned. Monthly-course appearing at the age laid down by Shastras should be the proper guidance for this matter.

3. (a) No, not so frequent.

(b) Perhaps the cases of rape are much the same in number as before 1925. The amendment of the law of the Age of Consent has not done much to reduce such cases. In my opinion a law can be made more effective when the common folk are made acquainted with it by beat of drum or by any other way possible.

4. I don't think that the amendment of the law of 1925 has done anything more to protect the married girls against cohabitation with husbands by any of the three suggested methods. To make it more effective, I deem it fit to educate the mass in a moral disciplinary way, and then by the amendment of the law as contained in Sections 375 and 376, Indian Penal Code.

5. In my part of the country girls attain puberty generally at the age of 12 or 13, but hardly before 12. The age of attaining puberty depends largely on the nature of food taken.

(ii) It differs to some extent according to the sundry orders of social standing. The girls of well-to-do men shall attain the age of puberty earlier than those of the poor men.

6. Under none of the three circumstances cohabitation is so common.

(ii) Cases of the second and third nature are fewer than those of the first in law courts.

7. Yes. It is the injunction of our Shastras that marriage should certainly be performed before the first "Rajodarshan" (the appearance of puberty). Rajodarshan in women indicates sufficient strength for bearing child burden as in the same way as the flowering of tree, proves its capacity for sustaining fruits. Hence in the Shastras, women attaining puberty are called by the name of "Pushpabati" or having flowers or showing signs of bearing fruits. A detailed answer to this question is given on a separate paper attached hereto.

8. "Gaona" and "Garbhadan" ceremonies are not the one and the same thing. "Gaona" means the going away of a lady to her husband's house while "Garbhadhan" is a religious ceremony for the physical and mental betterment of the child whose foundation is going to be laid subsequently and is observed immediately after the monthly-course and before the first sexual intercourse.

Since "Gaona" means going away of a lady to her husband's house, it should be performed after marriage. But "Garbhadan" ceremony has now fallen into disuse and is observed only by those who are cultured and have implicit belief in it.

9. No doubt, the attainment of puberty justifies the consummation of marriage but for the safe guarantee of herself and her children's health, the sexual intercourse should be delayed as long as possible. But the delay and non-delay should solely depend on the sweet will of the women concerned.

10. After the appearance of puberty which generally occurs in India between the age of 12 and 13.

12. Yes, early consummation and early maternity certainly go a long way to injure both the intellectual and physical strength of the mothers and their issues and make them comparatively short-lived.

14. The bulk of the female population in my part of the country love to like the early consummation of marriage for their children but it is perhaps due to their utter ignorance of the bad consequences occurring therefrom.

15. Though I have no personal knowledge of such difficulties, yet it highly probable. Hence it is perhaps better to set aside the age limit and decide such cases by having recourse to the sure sign of the first appearance of puberty.

16. Certainly, raising the limits of the Age of Consent to 14 years or above seems highly serviceable in materially reducing and minimising the difficulties or margin of error but this increment in the Age of Consent will certainly go a long way to do a greater degree of harm in other direction as for instance a woman after her puberty becomes eagerly anxious for sexual intercourse if she happens to be under 14 or the prescribed age-limit, she shall be prohibited to have her fiery cravings satisfied with her recognised husband either she or her husband being afraid of the law, she will then naturally look for an illegitimate man and thereby she would do a good deal of mischief to the society and to herself as well and out of the fear of the social and court laws, the death of such illegitimate child is sure to follow.

17. The two offences should be treated as separate ones. The punishment in case of extra-marital offence should be more severe than that of marital one.

19. (i) She must be married without fail when completes the age of 14.

(ii) The grown-up girls after their puberty should not be allowed to stay with their parents for more than a month after their marriage without any reasonable cause.

(iii) The selling away of girls who are innocent and meek ones by their guardians for the sake of money, should be prohibited by the effective means of the law.

(iv) A widow (not prostitutes) unable to preserve her chastity should not be allowed to cohabit with more than one man who promises to have her as a .

wife for good. In such case, either of them leaving the other for any reason not approved by the respectable man of the village concerned, should be liable to severe punishment and in no case either of them should be allowed to re-marry.

(v) A village committee over five or six neighbouring villages should be made consisting of 10 or 12 educated and respectable gentlemen. To these honorary men should be entrusted the task of preventing such crimes from creeping into the society. They should be given certain powers for the purpose.

(vi) Moral teaching should be given to people to the effect.

20. In my opinion, the penal legislation fixing the maximum age of marriage is not more effective than that fixing the minimum one. To celebrate nuptial ceremonies cannot be a crime as it does not mean that there should essentially be sexual intercourse after it. It is done simply to safeguard the chastity of poor father's girls by entrusting them to the safe keeping of their fathers-in-law and mothers-in-law. But the main thing that should at all cost be avoided is the early consummation. I think, the majority of us, are in this side of fixing the minimum age of marriage.

21. The uncultured mass of our province can be better brought to light and awakened to the evil consequences occurring from the early sexual intercourse, through education and social propaganda. But the penal law is in no way less needed to reclaim them. Hence in my opinion both of these measures should be adopted for the complete fulfilment and realization of the object in view.

पराशर स्मृतिः अ० ७

१ अष्टवर्षाभवेऽज्ञो नववर्षा च रोहिणी ।

दशवर्षा भवेत्कन्या शत उर्ध्वं रजस्वला ॥ ६ ॥

२ प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।

मासि मासि रजस्तस्याः पिवन्ति पितरः स्वयम् । ७ ॥

३ माताचैव पिताचैव ज्येष्ठो भ्राता तथैव च

त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥ ८ ॥

वसिष्ठ स्मृतिः अ० १७

४ प्रयच्छेन्नरिकां कन्यां ऋतुकालभगात्पिता ।

ऋतुमत्यां हिति न्या दोषः पितर मृच्छति ॥ ६२ ॥

५ यावत्कन्या ऋतवः सृशन्ति कुर्यैः सकामाभियान्मानाम् ।

भूणाति तावान्ता इतानिताभ्यां मातापितृभ्यामिति धर्मवादः ॥ ६३ ॥

अथ वीधायनस्मृतिः प्रश्न ४ अ० ८

६ दद्याद्गुणवते कन्यां विधिवद्ब्रह्मचारिणे ।

अपि वा गुणहीनाय नोपसन्धाद्ब्रजस्वलाम् ॥ १२ ॥

७ श्रीनिवर्षाणुत्तमर्ती यः कन्यां न प्रयच्छति ।

सतुल्यं ब्रह्महत्यायै दोषश्छेत्त्य संशयम् ॥ १३ ॥

८ त्रीणिवर्षाणि ऋतुमतो काचेत पितृशासनम् ।  
ततश्चतुर्थेवर्षे तु विन्देत सदृशं पतिम् ॥ १५ ॥

मनुस्मृतिः अ० ८

८ त्रिंशद्वर्षोद्धहेत्कन्या दद्याद्वादशवर्षिकीम् ।  
अष्टवर्षोऽष्टवर्षी वा धर्मे सीदति सत्वरः ॥ ८४ ॥

१० उत्कृष्टाद्याभिरूपायवराय सदृशाय च ।  
अग्रामामपितांदद्यात्तस्मैकन्यां यथाविधि ॥ ८५ ॥

११ कालेऽदातापितावाच्यः वाच्यश्चानुपयन्पतिः ।  
मृते भर्तारि पुत्रस्तु वाच्योमातुर रक्षिता ॥ ४ ॥

१२ सूक्ष्मेभ्योऽपि प्रसङ्गेभ्यः स्त्रियोरन्याप्रयत्नतः ।  
द्वयोर्हि कुलयोः शोकमावहेयुररक्षिताः ॥ ५ ॥

अथ ऋतोः पूर्वं यदि न दत्ता तदा ऋतोः पश्चाद्दानेविधिमाह—  
निर्णयसिन्धावाश्वलायनः—

१३ कन्यामृतुमतीं शुद्धां कृत्वा निष्कृतिमात्मनः ।  
शुद्धिं चकारयित्वा तामुद्धहेदानृशंस्यधीः ॥ १ ॥

१४ पिताऋतून्स्वपुत्र्यास्तु गणयेदादितः सुधीः ।  
दानावधि गृहे यस्मात्पालयेच्चरनोवतीम् ॥ २ ॥

१५ तद्यात्तदृतुसंख्यागाः शक्तः कन्यापिता यदि ।  
दातव्यै कापि निःस्वेन दाने तस्या यथाविधि ॥ ३ ॥

१६ दद्याद्वा ब्राह्मणेष्वन मति निःस्वः सदक्षिणम् ।  
तस्यातो तर्तुसंख्येण वराय प्रतिपादयेत् ॥ ४ ॥

१७ उपोष्य त्रिदिनं कन्या रात्रौ पीत्वा गवांपयः ।  
अष्टष्टरजसे दद्यात्कन्यायै रत्नभूषणम् ॥

तामुद्धहन्वरश्चापि कूष्माण्डैर्जुहुयाद्भिजः ॥ ५ ॥

एषुच प्रथमं वचनं दशवर्षात्परतः रजोदर्शनं सम्भावयति द्वितीयञ्च  
वचनं द्वादशेवर्षे कन्यामदातुः दोषं वदन् द्वादशेऽवश्यं रजोदर्शनं वदति ।  
८-१० मञ्जुद्वादश्यावत्परांकाष्ठां निर्णयति ।

३-४-५-६—वचनानिच ऋतुकालात्पूर्वमेवयोग्यं वराय कन्यादानं  
 ऋतोपस्थाश्च कन्यादाने दानाधिकारिणाम् मातृपितृ भ्रातादीनां नियतं  
 दोषं बोधयन्ति । तस्माद्वादशवर्षादृतु सम्भवात्पूर्वमेव वा कन्यादानस्य  
 विवाहस्यच मुख्यः समयः सुस्थिरः । ऋत्वनन्तरञ्च भ्रूणहत्यादि समपाप  
 रूपोऽधर्मः शास्त्रेविहितः दातृणाम् ॥

अथ यदि पितृगृह एव ऋतुमतो भवेत् पित्रादयश्चनहि दत्तवन्तः  
 तर्हि कियच्चिरं प्रतीक्षेति विषये—७ मञ्च वचनं ऋतुसम्भव कालात्परतः  
 वर्षत्रयं विलम्बितवतः पितृभ्राह्महत्यादोषं वदत्तदवधि गौणं कालं मनु  
 मन्यते यत्पञ्चदशवर्षं यावद्गच्छति । तत्रचविषये १३—तः १७—यावद्दत्तैः  
 अतिक्रान्त समयं निमित्तं प्रायश्चित्तं कृत्वा कन्यादानं पित्रादिः वरश्च  
 विवाहं कर्तुं शक्नोति । ततः परतस्तु पूर्णं पञ्चदशवर्षानन्तरम् । ऋतुमतो  
 वरयोग्याकन्या पित्रादोनुपेक्ष्य स्वयमपि योग्यं वरं कर्तुं शक्नोति तथा  
 कृत्वाच धर्मरक्षाकुर्यादिति ८ मेन वचनेन विधीयते ।

इत्यञ्चकथञ्चनापिषोडशवर्षाभ्यन्तरेऽवश्यं वरेण सह भवेदेवेतिशा-  
 स्त्रीयो नियमः ततः परं सतोत्तरक्षायाः कर्तुंमसम्भावितत्वात् ।

अथेदानींविवाहान्तरं पत्युभार्यासङ्गमस्य विचारः प्रसूयते तत्र  
 आपस्तम्बः अ० ७—

१ स्नानं रजस्त्रलायास्तु चतुर्थेऽनि शस्यते ।

वृत्तेरजसिगम्यास्त्री नानिवृत्ते कदाचन ॥ १ ॥

लब्धाश्ललायनस्मृतिः

२ गर्भाधानान्तोक्तुर्याद्विजः प्रथम एवहि ।

चतुर्थदिवसादूर्ध्वं पुत्रार्थी दिवसे समे ॥ २ ॥

मनुस्मृतिः अ० ३

३ ऋतुकालाभिगामीस्यात्सदर निरतः सदा ।

पर्ववज्रजैर्ना तद्वृत्तोरतिकाम्यया ॥ ४५ ॥

४ षोडशर्तुनिशास्त्रीणां तस्मिन्नुग्मासुसंविमेत् ।

ब्रह्मचार्येव पर्वाण्याद्याचतस्रश्चवर्जयेत् ॥ ४६ ॥

५ तासामाद्यासतस्तुनिन्दितैकादशीचया ।

त्रयोदशीचशीषास्तु प्रशस्तादशरात्रयः ॥ ४७ ॥

एषुवचनेषु प्रथमेनवचनेन रजः प्रवृत्तेषुतुर्थेऽहनि स्नानं प्रशस्यते रजः प्रस्नावसमाप्तौ सम्भोगोऽसमाप्तौ तु कदापि न संभोग इति बुध्यते ।

द्वितीय वचनेनतु प्रथमतीर्ण एव चतुर्थदिवसात्परं समदिवसे पुत्रेच्छया गर्भाधानस्य समयो नियम्यते । एतेन प्रथमतीर्ण प्रथम समागम संस्कारो गर्भाधानसंस्कार इति स्थिरम् । तत्पश्चात्स्त्रीप्रसङ्ग विषयेतु ३-४-५ श्लोकैः रजः प्रवृत्ते षोडश दिवसान्तरे प्रथमं गमनं पुत्रार्थं विधीयते । स्वदारेष्वेव गच्छेदिति द्वितीयस्त्रीरक्षार्थं विधीयते । स्त्री कामनायां सुखार्थं गमनञ्चेति तृतीयस्त्रीरक्षार्थमेव विधीयते । तत्रच सर्वत्रैव चतुर्दशी ८ मी ६ षो १५ अमावास्या पूर्णिमा रवि सङ्क्रान्तिः इति षट् अवश्यवर्जनीयाः । तथाचैतत्सकल समालोचनेन षोडश दिनाभ्यन्तर द्वैत्रीणिवादिनानि पुत्रोत्पत्ति सम्भवाभि प्रायेण सङ्गमाय विधीयन्ते प्रतिमासम् । ततः परंतुस्त्रीचरित्र रक्षेद्विज्ञेयम् । अन्यथागमनस्यानावश्यकत्वात् ।

अथेदानींपरमावश्यकीऽयं प्रश्न उपतिष्ठते यदिदमृतौ गमनं पुत्रोत्पत्त्यर्थं धर्मशास्त्रे विधीयते तत् किं कन्यायाः षोडशवत्सरात्परमेव ततः पूर्वमपिवा तत्रायुर्वेदानुसारेण षोडशावत्सरात्परमेव प्रतीयते तथाहि—सूत्रस्थाने सुश्रुतसंहिता अ० ३५

पञ्चविंशे ततोवर्षे पुमाक्षारीतुषोडशे ।

समत्वागतवीर्य्यौतो जानोयात्कुशलोभिषक् ॥ १३ ॥

पुनः सुश्रुत संहिता अ० १०

ऊनषोडशवर्षायामप्राप्तः पञ्चविंशतिम् ।

यदाधत्तेपुमान्गर्भं कुक्षिस्थः सविपद्यते ॥ ५४ ॥

जातोवा न धिरस्त्रीवेत् जीवेद्वादुर्वलिन्यः ।

तस्मादत्यन्तवालायां गभधानं न कारयेत् ॥ ५५ ॥

एभिश्च त्रिभिर्वचनैः षोडशवर्षात्पूर्वं गर्भाधानेदोषाभिधानात् परतोऽपि पुत्रोत्पत्तेःसौष्ठवेन सम्भवाच्च तस्माषोडशावत्सरात्पूर्वम् ऋतावगमन मिति प्राप्ते ब्रूमः । धर्मशास्त्रवचनैः ऋतौगमनमात्रं विहितं साधारण्ये .

नेति सवच षोडशाद्वत्सरात्पूर्वमभिगमनं विधीयते । किञ्चसाधारण्येनैव  
ऋतावगमने धर्मशास्त्रेषु दोषोऽपि बोध्यते—

तथाहि पराशरः अ० ४

ऋतुस्नातांतु यो भार्यां सक्निधौनोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नात्रसंशयः ॥ १४ ॥

बौधायनः प्रश्न ४ अ० १

ऋतुस्नातांनगच्छेच्चैक्यतब्रह्मचारिणीम् ।

नियमातिक्रमेतस्य प्राणायाम शतंस्मृतम् ॥ २३ ॥

एवञ्चषोडशाद्वत्सरात्पूर्वम् ऋतुषु गमनागमनयोर्धर्मशास्त्रायुर्वेदयोः  
काव्यवस्थेति विषये विमर्शः इदमिहविचारणीयम्—आयुर्वेदस्यमुख्यो  
विषयः स्वास्थ्य रक्षणम् धर्मशास्त्रस्यच धर्मरक्षणम् तथाच यतः स्वस्थ  
सन्तानोत्पत्तिः षोडशाद्वत्सरात्पूर्वं नहि सम्भाव्यत इति अपुष्टाचिरजीवि  
सन्तानोत्पत्तिभिर्या पूर्वं गर्भाधानंनिषिध्यते नतु पूर्वं गर्भाधानमेव न भवति  
सन्ततिरेव वानोत्पद्यत इत्युच्यते । धर्मशास्त्रेणतु पूर्वमपि ऋतौगमनेन  
धर्मो रक्षितो भवति सन्ततिश्चोत्पद्यते इत्येव बोध्यते नतु सर्वशास्त्रस्यचिर-  
जीवनोचेतिनोभयोर्विरोधोवहंशक्यः । ततश्चायं निष्कर्षः सुपुष्टं चरजीवि  
सन्तानोत्पत्तिः षोडशाद्वत्सरात्परतः स्त्रियाः चतुर्विंशात्परतश्चपुरुषस्य संयोगे  
भवतीति तादृशपुत्रोत्पादनार्थमायुर्वेदानुसारेण षोडशाद्वत्सरात्परतएव  
गमनं सर्वसम्मतमविरोधात् । ततः पूर्वऋतुषुगमनमावश्यकं धर्मशास्त्र  
विहितन्तुप्राधान्येन धर्मरक्षार्थं पुत्रोत्पत्तिस्तुतदानीं गौणोपरतोऽपि कर्तुं  
शक्यत्वात् । अयमभिप्रायः रजोदर्शनान्तरं स्त्रीणां पुरुष विषयकः कामो-  
ऽवश्यंभवति स्वाभाविकस्तथाच पुंसम्भोगेच्छायां पत्युरगमने सति परेण  
पुंसाव्यभिचारो गर्भाधानञ्च सम्भाव्यते तस्मात् तद्रक्षणार्थमेवायं तादृश्याम-  
वस्थायां स्त्रीकामनायां गच्छेदेवेति । अधर्माविरोधेन धर्मरक्षायां नियम  
विधिः नतु तदानीमेव पुत्रोत्पत्तेरावश्यकत्वं बोधयति । अतएवच ऋतु-  
कालात्परतः यत्र गर्भाधानपुत्रोत्पत्तिसम्भावनापिनास्ति तत्रापि स्त्रीकाम-  
नायां सत्यां गच्छेदेवेति नियमो धर्मशास्त्रोः स्त्रीसंरक्षणमात्रैकफलकः ।

ऋतौ च कामनायामगमने तु गर्भधारणव्यापादनाद्य धर्मशङ्काभवतोति तदा-  
नौमगमने भूणहत्यादिरूपाऽधर्मोपि शास्त्रीयः तद्व्याख्यास्तत्र शास्त्रीयमेव  
बोध्यते । न तु वास्तवकी भूणहृत्यैव । तथात्वे ऋतावगमने राजदण्डो-  
पि स्यान्नचकोपि राजदण्डः स्मर्यते । अतएव च द्विजातीनां विवाहस्य न  
केवलं पुत्रोत्पत्तिः फलम् । किन्तु धर्मरक्षणम् पुत्रोत्पत्तिः सांसारिकं सुख-  
ञ्चेति त्रयम् शास्त्रेषूच्यते ततएव च पुत्रोत्पत्तेरकालीपि राजदण्डेन सम्भव  
काले द्वादशएव वर्षे धर्मरक्षापुरस्कृत्यैव सुश्रुतेऽपि कन्याविवाहो विहितः  
शरीरस्थाने अ० १० अथास्मै पञ्चविंशतिवर्षाय द्वादशवर्षां पत्नीमावहेत्  
पितृ धर्मार्थं कामप्रजाः प्राप्स्यतोति, तस्मात् द्वादशे वर्षे विवाहः तद-  
नन्तरं षोडशात्पूर्वं ऋतुषु कामनायामवश्यं गमनञ्च प्राधान्येन धर्मेक  
रक्षणायाम् अन्यथा रक्षायाऽसम्भाव्यत्वात् इति शास्त्रमिद्वान्तः ॥

## श्रीयमुनाप्रसादः शर्मा

धर्मशास्त्राध्यापकः

सुजफ़रपुरम्

ध० स० सं० महाविद्यालयः

५-८-१९२८

सुजफ़रपुरम्

Authorities in connection with the question No. 7 of the Questionnaire.  
(Enclosure to the statement of Pandit JAMNUA PRASAD  
TRIPATHY, Professor of Dharmasastra, Government D. S. Sans-  
krit College, Muzaffarpore, dated the 5th September 1928.)

### Parasarasmruti, Chapter VII.

1. A girl at her eighth year of age is called Gouri, at her ninth, Rohini, at the tenth she is a Kanya and after the 10th she becomes Rajaswala or she steps into an age in which menses begin.

Sloka No. 6.

2. If the father of a girl attaining the age of 12, does not marry her then the ancestors have to drink the menstrual blood of every month of that unmarried girl.

Sloka No. 7.

3. The father, mother and elder brother (or those who are entitled to give away a girl in marriage) all these three go to hell if they see the girl in puberty at their house.

### Btsistha Smriti, Chapter XVII.

4. A father should give away his daughter in marriage while she has not attained the age of puberty, for fear of her attaining puberty in his own



house because if she will have the menstrual flow in her father's house, then the father will be held responsible for the sin.

Sloka No. 62.

5. If a bridegroom of a noble family is available and the father does not give away his daughter in marriage to him, then he will be responsible for the murder of so many fetuses as many monthly courses she will have at his house.

Bondhayanasmr̥iti, Prasna 4, Chapter I.

Sloka No. 63.

6. A girl should be given away to a learned man who is a Brahmachari or even to a man who is not learned but when a girl attains the age of puberty she is not worth keeping in the house.

Sloka No. 12.

7. If even after three years of the attainment of puberty, the girl is not married, then the father commits a sin equivalent to the murder of a Brahman.

Sloka No. 13.

"A girl should wait for three years after she has attained puberty for her father's permission for marriage, but after that in the fourth year she is at liberty to marry herself with an able husband."

Sloka No. 15.

Manusm̥riti, Chapter IX.

9. "A man 30 years of age should marry a girl of 12 years and if some religious necessity arises a man 24 years of age can carry a girl of 8 years."

Sloka No. 94.

10. "If a bridegroom of a higher family or a bridegroom who is handsome and of equal rank is available then the girl even though she has not reached the marriageable age should be given away."

Sloka No. 88.

11. "After a girl has attained the marriageable age her father is responsible for her till she is married; after she is married her husband if he does not consummate with her is liable to bad names and after the death of her husband the son is spoken ill of if he does not protect his mother."

Sloka No. 4.

12. "A woman is forbidden from the shortest association with a man other than her father, husband or her son because it might bring an opportunity for repentance for her husband's and father's family."

Sloka No. 5.

The injunctions of the Shastras for marriage after the menstrual flow has appeared.

In Nirneya Sindha Ashwalayana Sm̥riti.

13. "When marrying a girl whose menstrual flow has appeared one should purify himself and the girl taking pity for her."

Sloka No. 1.

14. "The father of the girl should protect the girl and count how many monthly flows the girl has had till her marriage."

## Sloka No. 2.

15. "The father, if his means permit, should offer as many cows as the girl has monthly-courses before marriage or if he is poor he should offer only one cow."

## Sloka No. 3.

16. "If the father is so poor that he cannot offer even one cow he should offer corn to as many Brahmans as the girl had the monthly courses."

## Sloka No. 4.

17. "The girl herself should observe fast for three days and after taking some cow's milk and giving some jewelleryes to a girl who has not attained puberty, should marry, and the bridegroom after performing Kusamanda Homa should accept the bride's hand."

The first Sloka shows that a girl has menstrual flow after 10 years of her age. The second Sloka says that a father commits a sin if he does not give away his daughter in marriage before she is 12 years of age. This shows that 12th year is taken when the menstrual flow begins.

The Sloka Nos. 9 and 10 also say that 12th year is the limit of the age of marriage.

The Sloka Nos. 3, 4, 5 and 6 say that a girl should be married before her menstrual flow begins and the father, mother and the brother of the girl commit sin if the girl is not married before the flow.

Hence the age of the marriage is fixed before the 12th year of a girl's age or before her menstrual flow begins, and this is the injunction of the majority of the Shastras, because some injunctions have gone up to saying that the father, mother, or the brother of the girl commits murder of the fetus if they do not marry the girl before she has attained the age of puberty.

The 7th and 8th Slokas say that if the father of a girl does not give away his daughter for three years possibly up to her 15th year of age after she had attained puberty he commits a sin of murdering a Brahman.

The 8th says that the girl should marry herself in her sixteenth year, i.e., in the 4th year after her attaining the age of puberty if a fit suitor is available.

The Slokas 13th to 17th say that after the menstrual flow has appeared the father, the girl, and the bridegroom should purify themselves before the marriage for the delay in doing so.

Considering all these injunctions it is not clear that the marriage up till the 12th year of a girl's age or before the first appearance of the menstrual flow is regarded of first grade.

The marriage between the period of three years after the first appearance of the menstrual flow, i.e., possibly till the 15th year of a girl's age is regarded of second grade importance by the Shastras.

The Shastras permit the girl to enter into a tie if her guardian does not arrange for this before her fifteenth year. The question of marriage ends.

We take up the question of consummation now.

## Apastambha, Chapter VII.

From the day whence a woman has her menstrual flow for four days she is Rajaswala and she should take her bath on the 4th day and after this she may consummate and not while she is having the flow.

## Sloka No. 1.

## Laghwaswlayan Smṛiti.

A twice born should perform the first consummation ceremony with his wife for the first time on even days after fourth days of first appearance of the menstrual flow of his wife. This is called Garbhadan ceremony.

## Manu, Chapter III.

Slokas 45, 46 and 47.

The period from the day the menstrual flow appears till the sixteenth day is called Ritu, and this period is fixed for Garbhadan. Among these sixteen the first four days, eleventh day, thirteenth day of the menses, Chaturdashi, Asptami, Sashthi, Amawasya, Purnima, and Rani Sanbrahti days are forbidden for consummation:—

- (1) Considering all these injunctions one has only three or four days left for consummation for the sake of bearing child every month.
- (2) Secondly whenever the wife wishes to consummate the husband must satisfy her.
- (3) Thirdly, the husband must consummate with his wife only and no one else.

Among these three orders the first is such that with the satisfaction of the wife's desire one may beget child also with the consummation. But second and third are only to satisfy the lusty desire of the pair and by this the wife's chastity will be protected and the husband will be able to keep his character pure. Now the question arises that whether the Shastra's sixteenth year of the wife's age which is against the orders of the Ayurved is really contrary to the injunctions of the Ayurveda or not, increase Ayurveda in Susruta Samhita says: Sutrasthan, Chapter 35, Sloka 13, says:—

That a man of 25 years of age and a woman of sixteen years of age are (Medically) fit for consummation.

In Chapter 10, Slokas 54 and 55 say that before sixteenth year of a girl's age if a man of less than 25 years' of age consummates and if the woman becomes pregnant then the child in the womb will not survive, and even if it survives the child will be very weak.

Under such circumstances we can say that the Ayurveda aims at protecting the health of men but the Shastras aim at the protection of the Dharma.

The Shastras say nothing in contrary to the Ayurveda that one must consummate before the girl is of sixteen years of age. The aim and object of the Shastra injunctions are only to protect the chastity of a woman and the character of a man. If one could protect his or her character without consummating before the age reached as ordered by the injunctions of the Ayurveda so much the better. Shastras never appose the aims of the Ayurveda rather they are in contravention to them.

The consummation before 16th year of a girl's age and a marriage before her 12th year have the same object in view, i.e., the protection of one's character. A Hindu marriage has three objects according to the Shastras, i.e., (1) the protection of Dharma, (2) child-birth and (3) satisfaction of the worldly desires, the first of which is most important and supporting this fact of the Shastras the Ayurveda also proscribes the time of marriage at the 12th year of a girl's age. Sashrata Samhita Sarir Asthan, Chapter 10, Sloka 53, runs thus:—

A man of twenty-five must be married to a girl of 12 years for the sake of health, Dharma, worldly desires, and children.

The injunction of the Shastras that the marriage of a girl should be performed at the 12th year is not apposed by the Ayurveda with the object of protection of Dharma, and this injunction too of the Shastra that even before the 16th year of a girl's age at the time when she has passed her period of monthly course the husband must cohabit with his wife is only aimed at the protection of Dharma otherwise if the wife goes to some other man for her satisfaction there will be a great loss of the Dharma because she will beget a bastard child. With this very idea it has been said that the man who does not cohabit with his wife at the end of her courses commits the murder of a fetus. Parasaramriti, Chapter IV, Sloka 14.

This is not a criminal breach rather it is a moral binding and a great sin.

**Written Statement, dated the 5th September 1928, from Pandit DEV KANT GIDDHAN SHASTRY, Professor of Sankhya, D. S. S. College, Muzaffarpur.**

1. (a) Yes, there is the deep dissatisfaction with the state of law as to the Age of Consent as contained in Sub-section 5 of Section 375 and its exceptions and Section 376 of I. P. C., because according to this the husband cannot cohabit with his wife though she has attained puberty (got menstruation) before she is 14, 13 or 12 years of age and because he renders himself liable for punishment if he cohabits with his wife without any threat or fear, seeing the desire of his wife for sexual intercourse before 12 years of age even when she has got no menstruation. This is against the injunctions of the Shastras as will appear from the quotations given hereafter.

(b) If the wife desires cohabitation and the husband be prevented from satisfying her, there is the probability of her going stray and thus of losing her chastity. This will be supported by the injunctions of the sages and the law-givers.

*Original.*

यद्यजात लम्बेवातीव पुंषोधमोगाभिलाषिणौर्भवति तर्हि त्रिरा-  
चादुर्ध्वं तद्रक्षणार्थं सम्भवितव्यम् । अपि च ऋतुकालादन्यत्र रागमाचा-  
धीनत्वाद्, सम्भवस्य, स्त्रोणां तदभिलाषेऽपि पुंमो शभाभावादकारणमपि  
प्राप्नोति, तदनेन निरस्यते । अन्यथा स्वत्वभिलाष परवशा कदाचिद-  
कार्यमपि कुर्यात् । तस्मात् विनापि ऋतुकालं स्त्रोणां रक्षार्थं सम्भाव-  
ितव्यम् । रक्षणं स्वत्वासा मवश्यमेव कर्तव्यम्, अकुर्वतो दोष श्रवणम् ।  
सोयं रक्षणीषाय सम्भवोऽपि नियस्यते—

ऋतुकालाभिगमनं कार्यपुंसां प्रथमतः ।

सदैववा पर्ववदम्, स्त्रोणामभिमतं हितम् ।

(Govil Grihya sutra, Chandra Kanta commentary, 2nd prapathak, 5th part, 7th sutra, 361 page.) (Asiatic Society, Calcutta.)

*Translation.*—If she desires the union of her husband, sexual intercourse shall be intervened into for her protection after three nights. Moreover in times other than menstruation if the woman due to influence of passion want sexual intercourse and the husband has no passion for it, sexual intercourse is not possible—this is cancelled by this, otherwise being overpowered by passion she may probably do something improper. Therefore sexual intercourse shall be made for the protection of women even when they are not in the family way by all means excepting on the occasions of festivals because the women (wives) desire this. (Fide Gobhila Grihyasutra—Chandra Kant Commentary, 2nd Prapathak, 5th Chapter, 7th Sutra on page 361, Volume I, printed in 1908, by Asiatic Society, Calcutta.)

*Original.*

‘यथाकामो भवेद्वापि स्त्रोणां वरामनुस्मरन् ।

स्वदार निरतश्चैव स्त्रियोरन्या यतः स्मृताः ॥

*Substance.*—A man (husband) remembering the boon granted to a woman by Indra should cohabit with her according to her wishes and be always devoted to her because it is necessary for him to save her chastity. (*Vide* Yajyabalkyasmirti, marriage context of Acharadhyaya, Sloka 81 on page 20 of Venkateshwar Press of Bombay, published in 1900.)

“भार्याया इच्छानतिक्रमेण प्रवृत्तस्तेदस्यास्तीति “यथाकामी” भवत् ।  
यस्मात् स्त्रियोरव्याः स्मृता—नुक्ता । ‘कर्त्तव्यश्चसुरक्षिताः’ तच्चसुरक्षितत्वं  
यथाकामित्वेन स्थूलरागमनेन भवतीत्यत्राह—“तामिन् युग्मासु संवि-  
शेत्” ‘स्त्रीणां वरामिन्द्रदत्तमनुस्मरन्’ ‘भवतीनां काम विहन्ता पातकी  
स्वादिति’ ।

(Yagyabalkya Smriti—Mitakshara.)

Its mitakshara of Vijnaneshwar:—A woman's chastity can be saved in two ways (1) if the husband enjoys his wife alone and (2) does not cohabit with any other woman. Indra has granted a boon to women that the husband not satisfying her desire will be taken hold of by sin.

षोडशत् निशाः स्त्रीणां तामिन् युग्मासु संविशेत् ।

It is written in Sloka No. 79 of Yajnavalka Smirti that there are sixteen days for the menstruation of a woman out of which 4 days should be passed and then she should be cohabited on the even number of days. This very thing is written in the Apraska Commentary of this very Sloka on page No. 104, which has been supported by the quotation from Harita. It is also corroborated by the Sutra No. 8 in the 2nd Prapathak, Section 5 of Gobhila Grihya Sutra, also by the Sanskaratattva of Smrititattva by Raghunandan Bhattacharya (of Bengal) and by page 68 of Sanskara Ratna Mala of Gopinath Bhatta, published by Hari Narain Apte from Poona containing quotations from Dharma Shastra. In this last book there are quotations from Matsya Purana and Kasyapa which support that after 12 years of age a girl actually gets menstruation and even when there is no external sign of it menstruation remains within her in a latent condition.

*Original.*

“गर्भाधानमृतीपंसः”.....

“यदनुमतीभवत्यपरतशोणिता तदा सम्भवकालः । “चतुर्थेऽहनि  
ज्ञातायां युग्मासु वा गर्भाधानवदुपेत ब्रह्मगर्भं स ददाति । “मृतीच  
सन्निपातो दारिणानुव्रतम्”

(Aparak, page 104, quoted from the Yagyavalkya and Harit.)

वर्षद्वादशकादूर्ध्वं यदि पुष्यं वहिवह्नि, अस्तः पुष्यं भवत्तच्च पतसो-  
दुम्बरादिवत् । अतस्तच्च प्रकुर्वीत स्त्रीसङ्गं बुद्धिमान्नरः । वर्षद्वादशका-  
दूर्ध्वमतो मृतो रप्राप्तावपि गमनसुक्ताम्

(Sanskara Ratnamala by Gopinath, quoted from Dharmasootra—Matsya Puran and Kasyap.)

4, 13 and 15. The people of my side are not acquainted with the amendments and resolutions regarding the Age of Consent Bill.

5. In this side generally girls are found in the family way after the age of 14 years, but this differs in various sections and communities of people.

6. In this side generally sexual intercourse is entered into when the girls get menstruation or after it.

7. In my side people cohabit with their wives after they actually get menstruation and this is according to the injunctions of the Shastras. If this injunction be not followed, the person guilty of this according to the gravity of offence will remain in hell, have the atonement of embryo-killing, have to observe the Prajapatya festival (of 12 days) and half Prajapatya or the fast of three days, or will have to practise Pranayam three hundred times or one hundred Pranayams as given in the Shastras. (Vide Parasara Smriti with Sayana Commentary, Prayaschitya Kand, 4th Chapter, pages 33 and 34, Volume II, Part I, published by Government Central Book Depot, Mysore. Hence we find the quotations from Yama, Bandhayana and Brihaspati. Similar quotations are given in Sanskaratattva of Smrititattva by Raghunandan on page 907, and in Gobhila Grihya Sutra with Chandra Kanta Bhattacharya commentary, 2nd Prapathak, Section 5, Sutra 8, on the page 362, which gives the quotations of Vishnu. Sulpani Misra in his book called Prayaschita Viveka quotes the wordings of Brihaspati and Sanibarta on the page 381. Hemadri quotes in his book called Chaturbarga Chintamani the wordings of Devala, Katyayana and Maharaj Vijaya supporting my view on page 346 of Prayaschita context published in 1904 by the Asiatic Society of Calcutta. Similar quotation is found in the Sanskara Ratnamala of Gopi Nath in the Garbhadan context on page 686.

Original for the above:—

ऋतुमन्तीस्तु यो भार्यां सन्निधौ नोपगच्छति ।

अवाप्नोति समन्दात्मा भ्रूणहत्यामृतावृतौ ॥

(Sanskartatwa.)

पर्वानारोग्य वजमता व गच्छन्त्यत्रो विरात्रमुपवसेत्—विष्णुस्मृतिः ।

(Gobhil Grihya Sutra's Chandra Kanta.)

ऋतौ नगच्छेद्भार्यायः सोपि कृकच्छार्धमाचरेत् ।

(Brihaspatismriti.)

ऋतौ नोपैति यो भार्यां नियतां ब्रह्मचारिणौम् ।

(Sambarta.)

नियमातिक्रमात्तस्य प्राणायामश्चैतामृतम् ।

(Maithil Shoolpani, Prayaschitta Bibek.)

सनदज्ञानविषयम् । ज्ञानभ्यासे प्रजापत्यम् ।

ऋतुज्ञानान्तु यो भार्यां सन्निधौनोपगच्छति ।

भ्रूणहत्या सवाप्नोति नरकश्चाधिगच्छति ।

देवलः ।

(Chaturbarg Chintamani Hemadri.)

ऋतुस्नातान्तु यो भार्यां सन्निधौ नोपगच्छति ।  
 भ्रूणहत्यामवाप्नोति नरकश्चाधिगच्छति ।  
 ऋतुस्नातान्तु यो भार्यां व्रतश्चाहविवर्जित ।  
 स्वयंवरो रोगरहितो यभेत्सन्तानकाम्यया । कात्यायनः ।  
 अन्यथा रोगमाप्नोति प्रायाश्चित्तमिहार्हति ।  
 अनिमित्ततया विप्रः पत्नोऋतुमतीं त्यजेत् ।  
 भ्रूणहत्यामवाप्नोति प्रजापत्यं समाचरेत् ॥

महाराज विजयः ।

पूर्वोक्त निमित्तैर्विना ऋतुमतीं सन्त्यजत् ।  
 प्रजापत्यं कृत्वा दोषान्मुक्तो भवेत् ।  
 ऋतुस्नातान्तु यो भार्यां सन्निधौ नोपगच्छति ।

(Parasar Smriti.)

घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः ।

(Parasar Smriti.)

यः स्वदारान् ऋतुस्नातान् स्वस्थः सन्नोपगच्छति ।  
 भ्रूणहत्या मवाप्नोति प्रजाप्राप्ता विनश्यति ।  
 ऋतौ नोपैति यो भार्यां नियतां ब्रह्मचारिणीम्  
 नियमातिक्रमात्तस्य प्राणायामशतं स्मृतम् ।

सम्भवतः ।

(Brihaspati.)

ऋतुकालाभिगमनं पुंभिः कार्यं प्रयत्नतः ।  
 ऋतौ न गच्छेद्यो भार्यां नियतां ब्रह्मचारिणीम् ।  
 नियमानि क्रमात्तस्य प्राणायाम शतं स्मृतम् ।

(Bandhayan Smriti.)

N.B.—These atonements are binding on the healthy (free from disease) husband not willing to cohabit with his wife after her menstruation and also on the wife who is not willing to copulate with her husband. If a woman, though in the family way does not like cohabitation and the husband also does not like it, the atonements (Prayaschita) cannot be obligatory to any body. This is corroborated by the Maskari Commentary of Gautama Dharma Sutra, Chapter V, Sutra 1 and I also quite agree to it. Vijnaneshwar in his learned commentary called mitakshara of Yajna Vallya Smriti quoting the views of the ancient sages and law-givers support this, *vide* marriage context of Acharadhyaya on page 21. But he afterwards says in the same connection that Bharuchi and Vishwarup and others do not agree to this and say that the healthy (free from disease) husband and wife should cohabit with each other when they do not like sexual intercourse. Chandra Kanta Bhattacharya in his commentary on Gobhila Grihya Sutra also supports this very view. *side* 2nd Prapathak, Section 5, Sutra 8, Volume I, on page 362.

Sexual intercourse is prohibited in cases when any of the two (husband and wife) is deceased, imprisoned or is in a foreign place or when there is impurity (Sutaka) owing to the death in the Gotra. (*Vide* Gobardhan context of Sanskara Ratnamala by Gopinath where he quotes the wordings of Vyasa and Manu.

*Original.*

“ऋतावुपेयात्, सर्वत्र वा प्रतिषिद्ध वर्जम्”.....तस्मादनष्ट-  
रागस्य रत्नर्थमपिदारग्रहगामस्येव । ततश्च यदि जायापती विरक्तौ-  
भवतः, गमनञ्च पुत्रार्थमनेत्तदानीमृतावेनोपेयात् । सरक्तयोः सर्वत्र वा  
इत्युपययन इति तर्हि ऋतावुपगमन मकुर्वतो दोषाभावः, प्राप्नोति  
सदोष इति चेन्न अस्वाभिरपि दोषभावस्यैवेत्यमाणत्वात्” ।

(Maskari Commentary of Gotami Dharmasutra, 5th chapter.)

(१) व्याधितो वन्धनस्थो वा प्रवस्सद्यथ पर्वसु ।

ऋतुकालितुनारीणां भ्रूणहत्या न युज्यते ॥

(२) भूतके वन्धने विप्रो ह्यथकथ्य विवर्जितः ।

नैनसा लिप्यते तद्वृत्ता वगमनादपि ।

(Sanskara Ratnamala, Garbhadhan Prakaran by Gopinath Bhatta.)

8. In my side the generally prevailing custom is that Gauna ceremony is performed on dates considered auspicious by the Shastras when the girl gets menstruation.

9. Menstruation is not the sign of puberty and I hold generally after 16 years of age the girl attains full development fit to give birth to a child. If before this age the girl conceives, the child will be sickly as it is clear from the Shastras (*Vide* Susruta Samhita, Sarirothana, Chapter X, Slokas 54 and 55, Sloka 13 of Chapter 35 of Sutrasthana).

*Original.*

ऊनषोडशवर्षायाप्राप्तः पञ्चविंशतिम् ।

यद्याधत्ते पुमान् गर्भं गर्भाथः स विपद्यते ।

(Susrut Samhita.)

जातो वा न चिरंजोवेक्कोवेद्वादुर्बलेन्द्रियः ।

तस्मादत्यन्तं बालायां गर्भाधानं न कारयेत् ॥

(Sarir Sthan.)

पञ्चविंशे ततो वर्षे पुमान्मारी तु षोडशे ।

समत्वागतं वीर्यैतौ जानीयात्कुशलोभिषक् ॥

(Sootra Sthan.)

याभूताषोडशे वर्षे न च बाधत गर्भिका ।

मृत्युस्तस्याः सपुत्रायाः पितृश्चापि समागतः ।

(Jyotistatwa.)



This very thing is given in Jyotish Tattva of Smirti Tattva of Raghunandan Bhattacharya.

N.B.—The husband-wife even before her 16 years of age can cohabit with each other if they so like, the child thus born of them will not be sickly if the rules and injunctions of the Shastras be followed.

The kinds of food by which a child can be healthy are enumerated in the Brihadaranyaka Upnishad as its text given below will show:—

*Original.*

सयइच्छेत्पुत्रोमे शुक्लो जायेत वेदमनुब्रवीत सर्वमायुरिया दिति ।  
 क्षीरोदनं पाचयित्वा सर्पिस्त्रयमश्रीयातामीश्वरीजनयितवै ॥ १४ ॥ अथ  
 य इच्छेत्पुत्रोमे कपिलः पिङ्गलो जायेत द्वौ वेदा वनु ब्रवीत सर्वमायुरिया-  
 दिति । दध्नेदनं पाचयित्वा सर्पिस्त्रय मश्रीयातामीश्वरी जनयितवै  
 वै ॥ १५ ॥ अथ य इच्छेत् पुत्रोमे श्यामी लोहिताक्षो जायते चीन्  
 वेदाननुब्रवीत सर्वमायुरियादिति—क्षौदनं पाचयित्वा सर्पिश्चममश्री-  
 यातामीश्वरीजनयितवै ॥ १६ ॥ अथ य इच्छेद्दुहिताने पण्डिता  
 जायेत सर्वमायुरियादिति, निलौदनं पाचयित्वा सर्पिश्चममश्रीयाता-  
 मीश्वरी जनयितवै ॥ १७ ॥ अथ य सच्छेत्पुत्रोमे पण्डितो विजिगीतः  
 समितिगमः, शुश्रूषितां वाचं समिता जीयेत सर्वान् वेदा ननु ब्रवीत सर्व-  
 मायुरियादिति मार्द्वस्यौदन पाचयित्वा सर्पिश्चमनामश्रीयातामीश्वरी  
 जनतवै ।

10. Generally at the age of 14 years, a girl in India becomes competent to give an intelligent consent to cohabitation with a due realization of consequences.

12. I do not think that early consummation and early maternity are wholly responsible for high maternal and infantile mortality. The mortality is rather mainly due to want of proper food, ignorance of hygienic and embryological principles and improper cohabitation which is often made with the wife sometimes after her delivery and so on.

14. The women in my part of the country do not favour early consummation of marriage for their children. But they want that their female children be married before they actually get menstruation.

17. (a) I don't think anybody can be charged with the commission of rape in the following cases:—

- (1) The wife in the family way may like or dislike cohabitation but there is no harm (offence) if the husband cohabits with her.
- (2) Whether a wife is in the family way or not but she has completed the age of 12, and wants cohabitation, then she can be cohabited without any fear or threat, and thus there will be no offence at all.
- (3) Even before 12 years of age the wife though she has actually got no menstruation can be cohabited for the purpose of Sanskara called *Chaturthi*.

Authority for the above remarks:—

“वैधायनेनानृतौ गमन निषेध उक्तः, सस्त्रियाः कामाद्यावेज्ञेयः ।  
 “वर्षद्वादशकादूर्ध्वं यदिपुत्रं वह्निर्नहि भन्तः पुत्रं भवत्वेव पनसोदुम्बरा-  
 दितत् । अतस्तत्र प्रकुर्वीत स्त्रीसङ्गं बुद्धिमान्नरः । मत्स्यापुराणम्—  
 काश्यपः—वर्षद्वादशकादिति—अर्थात् पूर्णगमनं निषिद्धमितिज्ञेयम् ।  
 चतुर्थीकर्म्मसम्बन्धिगमनन्तु भवत्वेव तस्यवैधत्वात् । संस्काररत्नमाला—  
 इदमुपगमावश्यकं स्त्रीसंस्कारत्वात् । विवाह प्रः ५८५ ।

Also consult my answers to Questions Nos. 1 and 7 where the originals have been quoted.

(b) If the wife has got no menstruation and is below 12 years of age, whether she likes cohabitation or not, the husband cohabiting with her except for the purpose of “chaturthi sauskara ” may be punished in accordance with the Section 376, I. P. C.

दद्याद्गुणवते कन्यां नग्निकां ब्रह्मचरिणे ।

अपिवा गुणहीनाय नोपउन्धाद्रजाचलाम् ॥

(Bandhayan.)

पयच्छेन्नग्निकां कन्यामृतुकायाभयात्पिता ।

ऋतुमत्यांहि तिष्ठन्त्यां दोषः पितरमृच्छति ॥

(Basistha.)

उर्ध्वं दशब्दाद्या कन्या प्राग्रज्यो दर्शनात्तुसा ।

गान्धारिष्यात्समुदाह्या चिरंजीवितु मिच्छता ॥

(Sanskara Ratnamala, Bibah Prakaran by Gopinath Bhatta.)

कन्या ऋतुं समावेक्ष्य बान्धवेभ्यो निवेदयेत् ।

न चेद्दयस्तुतां भर्ते तेस्यभ्रूणहतस्समाः ।

(Narad.)

“पितृगृहेतु या कन्या रजःपश्यत्यसंस्कृता ।

भ्रूणहत्या पितुस्तस्याः सा कन्या वृषलीरमृता ॥

यस्तुतां वरयेत् कन्यां ब्राह्मणोज्ञान दुर्वलः ।

अश्रद्धेय मपाङ्गेय तांविद्याद् वृषलीपतिम् ॥”

(Atri and Kashyap.)

सोमकालेतुसम्प्राप्ते सोमोभुञ्जीतकन्यकाम् ।

ऋतुकालेतुगन्धर्वो वज्रिस्तु ऋतुदर्शने ॥

तस्मादुद्वाहयेत्कन्यां यावन्नर्त्तमती भवेत् ॥

(Sambarta.)

“हस्यादिष्टञ्च पूत्तञ्च प्राप्तेरजसि कन्यकाम् ।”

(‘Bibah Prakas’ under Sanskar Dipak, page 68 by Harshhnath Sharma ‘Maithil’.)

(c) My opinion is that if a man other than the husband cohabits with a woman below her sixteen years of age, he must be punished according to Section 376, I. P. C.

20. People in my side don't like that penal legislation should fix a higher Age of Consent for marital cases or it should fix the minimum age of marriage. They want to follow the injunctions of the Shastras as given in my answer to your Question Nos. 17 and I because it is necessary that a girl should be married before she gets menstruation. I give here as well some quotations from the shastras. The shastras clearly say that there is no time fixed for the beginning of menstruation and that it may take place even before the girl is 18 years of age (*vide* answer to Question No. XVII). It is obligatory that the husband and wife when they are free from disease should cohabit together after menstruation when they like to do so.

*Original.*

वेवाहिको विधिः स्त्रीणां संस्कारो वेदिकः स्मृतः ।

पतिसेवा गुरोवासो गृह्याद्यग्नि परिक्रिया ।

“वेवाहिको विधिः स्त्रीणां संस्कारो वैदिकः स्मृतः ।”

(Subh Karma, by Murari Mishra.)

21. People of this side and I myself as well don't like that the question of marriage, age and cohabitation of the husband and wife be decided by the law of the Government. This is and should be the look out of the society inasmuch as marriage is a religious ceremony ordinarily for a man and specially for a woman. This is corroborated by the following authorities:—

गर्भाष्टमेन्द्रे कुर्वीत ब्राह्मस्योपनायनम् ।

गर्भादिकादशे रात्रौ गर्भानुद्धादशे विधेः ॥

(Manu, 2nd Chapter, 36 Sloka.)

If the suitable husband be available and be able to protect his wife in accordance with the injunctions of the shastras, the marriage ceremony can be solemnized even before 12 years of her age. This is borne out by the following slokas:—

“त्रिंशद्वर्षां वह्नेत्कन्यां द्वादशवर्षिकीम् ।

अष्टवर्षोऽष्टवर्षा वा धर्मो मोदति सत्वरः ।”

(Manu.)

“त्रिंशद्वर्षः षोडशाकां कन्यां विक्रेत नान्निकाम् ।”

अष्टवर्षोऽष्टवर्षा वा धर्मो मोदति सत्वरः ।

सप्तसम्बन्धरादूर्ध्वं विवाहः सार्ववर्णिकः ।

कन्यायाः शस्यते राजन्नन्यथा धर्मो गर्हितः ॥

(Mahabharat.)

The object of marriage is not merely the production of children; the ceremony has got much to do with other things that are sacred according to religion as will be clear from the following quotations:—

Original.

“यद्यस्मै पञ्चविंशतिवर्षीय द्वादशववर्षी पत्निमा वदेत् । पित्रधर्माय-  
कामप्रजाः प्राप्यतीति” ।

“पितुर्हितं पित्र्यं आदादानादि, धर्मः श्रुतिः श्रुति विहितं यन्नाद्य-  
नुषानम्, अर्थः सुवर्षादिः, कामः स्त्रैषु विषयेषु इन्द्रियाणामानुकूलतः  
प्रवृत्तिः, प्रजाः पुत्रादयः ।”

(Sharirsthan, 1st Chapter, 53 Sotra.)

**Written Statements of Professors of Sanskrit Shastras Pandit DAYA-  
NAND JHA, RAMAKANTA JHA, MAHMOHOPADHYA SASHI  
NATH JHA and others.**

1. Yes. There is dissatisfaction as the present law of the Age of Consent goes against the imperative injunctions of Dharma Sastras which never allow the marriage of girls after the tenth year of her age.

2. In our opinion, there are circumstances which necessitate modifications on the present law of the Age of Consent. Because we abide by—and like to do so—the rules of Dharma-Sastras which make it compulsory on the part of males to cohabit their wives just after puberty if they close to one another.

3. The prevention or reduction is not appreciable as the crime of rape itself is not very frequent in our part of the country, and regarding seduction, the raising of age limit has made no appreciable effect whatsoever.

4. The amendment raising the Age of Consent within marital state to 13 years and after, appears to have been effective to some extent in preventing cohabitation with such girls as are within 13 years and have not attained puberty—partly by postponing the consummation of marriage and partly by stimulating public opinion in that direction but not by putting off marriage beyond 13.

5. The usual age at which girls attain puberty in our part of the country, varies according to their belonging to the working and non-working classes; and to their living upon rich, average and below average food, and also according to different climatic conditions in which they breathe. However, between 12 and 14 girls generally attain puberty in our part of the country.

6. Yes, it is common among all classes of people soon after puberty.

But such cases scarcely come to court.

7. As to the practice of early consummation of marriage before puberty, it is due to lust alone and as to that at puberty, it is mainly due to the clear imperative injunctions of Dharmasastras for which authorities are quoted and translated (By Pt. A. Mishra, M.A.) in Schedule A, attached hereto.

Authorities dealing with penalties for the breach of those religious injunctions are quoted in Schedule B, also attached hereto.

8. In our part of the country particularly in Mithila or Tirhut, ‘Gaona’ and ‘Garbhadan’ ceremonies are two different things. ‘Gaona’ is usually performed during a period ranging from 1 to 5 years after the date of marriage in case of higher castes of Brahmans and Kshatriyas and from 1 to 9 years after marriages—in case of lower classes in which (latter) matrimony generally takes place at an early age say at 3 and 4.

But ‘Garbhadhan’ ceremony—though enjoined by the Sastras and one of the ten Samskars (purifications) necessary for the re-born (विराज) has now died out of our part of the country. Here, the word ‘Gaona’ is traced to

be the degraded form of the Sanskrit word (गमनम्) which means "going or removing" of the bride for the first time from her father's house to that of her husband. Hence "Gaona" is entirely a social custom which "Garbhadhana" is a socio-religious one.

Therefore, the performance of "Gaona" ceremony is alone in vogue among all classes of the people. But in this respect, it should be observed that marriage among the lower orders, takes place at too early an age for the married couple—who sometimes, develop so differently in physis till the time of "Gaona" or second-marriage that very frequently one of them stands practically a deplorable match for the other consequently resulting in either a life-long discontent and disaffection between the two or in adding and multiplying to the vast number of "Shameful faces" in India. However, in this respect "Gaona" is anterior to the consummation of marriage because the married couple can't meet with each other before.

But such is not the case with Maithil Brahmins who very frequently pay visits to brides residing at their father's house.

In no community whatsoever does the question of puberty arise when a husband demands "Gaona" of his wife from her guardians. But it is an entire look-out of the matrons of the house whose counsels in this affair rule supreme. Hence "Gaona" generally takes place after the attainment of puberty in cases of the non-Maithil Brahmins, Kshatriyas and Vaisyas and Sudras, while that of the Maithil Brahmins, "Gaona" may be performed even before the girls attain puberty.

9. The attainment of puberty depends upon the vital strength of females and as such it may be taken as an indication of physical maturity justifying the consummation of marriage.

10. The age at which girls attain puberty and give an intelligent consent to cohabitation varies in different parts of India, partly in accordance with the nature of diverse climatic conditions where they breathe and partly with their bodily constitution which certainly plays a prominent part in this respect. But generally in our part of the country girls begin to give an intelligent consent to cohabitation with a due realization of consequences at about the age of 14.

11. We do not know of any cases.

12. Not exactly early consummation and early maturity but rather cohabitation before puberty, and irregular indulgence and want of proper care are responsible for high maternal and infantile mortality.

13. Yes, but it is confined to a few individuals here and there.

14. Not at all.

15. Nil.

16. It will be the same even if the Age of Consent be raised to 14 years or above.

17. There is a conspicuous difference in the very nature of the both marital and extra-marital offences, as the former seems to have no motive of doing any injury to his wife whereas the latter has got the bad motive of satisfying his lust at the cost of her chastity and physical well-being. That is, in one case the offender is a civil thief, while in the other, he is a high-way-man. Hence there should be some difference in the offences of both kinds and in their trials. The maximum punishment as laid down in Sections 375 and 376, is enough for both the marital and extra-marital offences.

18. Yes, we would. And in our opinion, the trials of both kinds should be differently conducted through the Government courts in extra-marital offences and through an honorary local body consisting of respectable personages of that neighbourhood where the case may originate—the body being vested with necessary powers with respect to marital cases.

19. Nil.

20. Both of these measures will go against the dictates of Dharmasastras; the first will create more cases in which one will have to violate either the injunctions of Dharmasastras or the strict letters of the law, while the latter case will be altogether against the clear injunctions of Dharmasastras quoted in Schedules attached hereto.

21. We would better prefer to rely on the progress of social reform by means of education and social propaganda in order to secure the object in view.

## Notes on Visits to villages by the Age of Consent Committee, Patna.

The Committee visited the village Phulwari situated about six miles from Patna and another village Bhusehra Dinapore 3 miles further off on the morning of 9th January 1929.

The village Phulwari contains 1,300 inhabitants comprising Hindus and Mohammedans in about equal numbers. The Hindus include a few Brahman families, numerous Vaishyas, Gowalas, Parsis, Telis and other castes. Among the persons present were Pandit Dharin Singh, President of the Union Board, Hakim Shahabuddin, Mohd. Abdul Hadi, L. Padam Rai, L. Baldev Prasad and about 50 others.

It was ascertained on enquiry that among the Mohammedans there was no fixed age for marriage. A girl was usually married at the age of 9 or 10 years among the lower classes and at the ages of 12 to 14 or 15 years among the higher classes and in some cases marriages took place even at the ages of 6 to 8 years. The girl is not however sent to her husband if married early till she has attained puberty. In one instance at Bhagwanpore a married Mohammedan girl of 9 years was stated to have given birth to a child 15 years ago. Generally speaking maternity was stated to take place at the ages of 14 or 15 years and rarely at the age of 12.

Among the Hindus, Bhumihar Brahmans were found to marry their girls at the ages of 6, 8 and 9 years and at times even at the ages of 5 and 6 but owing to the payment of *tilak* and dowry demanded by the bridegroom's parents marriages are delayed and older girls have to be married with younger husbands. The number of cases in which this happens is said to be about 25 per cent. It was also stated that elderly husbands secure young girls of 5 and 6 on payment of money owing to the difficulty of getting girls of older age. Boys in well-to-do families generally get married earlier at the ages of 8, 9 or 10 years. Gaona is stated to take place after two or three years and sometimes even before puberty but generally consummation takes place after puberty is attained.

Among the Vaishyas girls are married at the ages of 5 to 9 years and they are married to boys who are 5 or 6 years older and Gaona takes place when the girl is 11 or 12 years old regardless of the fact whether she has attained puberty or not. Consummation however does not generally take place till after puberty.

Among the Kuranchi Dwipi Brahmans usually the age of marriage of girls is 10 years but marriages also take place at the ages of 5, 6 or 7 years. Gaona generally takes place 3 to 5 years later.

Among the Halwais girls are generally married at the ages of 10 and 11 years and consummation takes place after puberty. Among the Dange Chatri community girls are married at the ages of 13 or 14 years and consummation takes place after puberty. Among the Ahers girls are generally married at the age of 10 years and sometimes even at the age of 12 and consummation takes place after puberty. Among the Paris girls marriages take place at the ages of 4, 5 or 6 years and the wealthier the man the earlier the marriage takes place. Among the Telis also girls are married when they are young but consummation takes place generally after puberty. Among the Kaisthas marriages of girls generally take place at the age of 16 years and only about 25 per cent. marry below that age.

Among the Mohammedans the chief spokesman was Hakim Shahabuddin who stated that he did not want any legislation fixing the age of marriage because it would interfere with their religion which permitted them to marry their girls at any age. A few persons present were prepared to accept legislation fixing the age of marriage but this gentleman told them that it would be against religion and that prevented further questions being put to them.

The Hindus were divided in their opinions—some stated that they would not like to have legislation but would prefer social propaganda in each caste lest the police may interfere in their domestic affairs but others stated that

without legislation no check would be effective and that 12 years may be fixed as minimum age for marriage of girls and 14 for consummation. Others stated that 14 might be fixed as minimum age for marriage of girls and 16 for consummation.

The village Bhusehra Dinapore next visited contains about 150 families of Hindus and 30 families of Mohammedans. It contains an upper primary school where there are 40 boys, the eldest of whom was 14 years of age. None of the boys was found to be married; there is no girls' school in this village.

Among the better class of Mohammedans, some of whom include railway employees and other Government servants, the usual age of marriage was stated to be 14 or 15 years. Among the lower classes including Telis, Pinjaras the age of marriage is said to have been low but it is now rising and hardly any marriage takes place before puberty.

Among the Hindus the usual age of marriage among the Telis, Kohlis, Paris and Dusads was low. Gowalas were found to marry their girls usually between 10 and 11 years and were celebrating Gaona either in the same year or one year later. The reason for marrying the girl early is that if a girl is 4 years old Rs. 400 is demanded as dowry and if the girl is 7 years old at least Rs. 700 is demanded. Among the Kohlis an old man of 50 can marry a girl of 7 or 8 by paying money. Among the Kurmis girls are married at the ages of 10, 11 and 12 years. Gaona takes place 3 years later. At Khogola a Halwai girl aged 9 years is said to have given birth to a child some years ago.

All the people present both Hindus and Mohammedans stated that they would have no objection to legislation fixing 13 years as minimum age for marriage and 15 years for consummation.

Dr. Beadon and Mrs. Nehru visited some of the women in their houses at Phulwari.

Mrs. Nehru and Dr. Beadon visited ladies of the village of Phulwari on 9th January 1929. About 30 women were present, all Hindus; castes present were Brahmans, Baniyas and Tamolis.

The *Baniyas* said marriage usually takes place between 11 and 13 years. In cases of economic pressure marriage may be deferred till 16-17 years. But in all cases Gaona takes place only 2-3 years after marriage, in any case post-puberty.

*Brahmans* said that marriage is celebrated at 9-11 or 12 years. Gaona is postponed till after puberty. A girl is never sent to husband's house till after puberty. Maternity usually occurs between 16-17. They have never seen maternity below 15.

*Tamolis* said that marriage takes place between 9 and 11 years. Gaona at 12-13 years. They have even seen maternity at 12 years.

Both *Brahmans* and *Tamolis* state that formerly puberty came later, between 14-15 years, now-a-days it comes earlier, e.g., at 11-12 years.

None of the women have seen maternity at 12-13 years during past 12 months. Mostly maternity takes place at 16-17 years.

They are desirous that marriage should be performed at 11-12 years, on account of religious sanction. If puberty occurs in father's house, the whole household goes to hell.

They state that they have seen difficult labours at 15, the labour being unduly prolonged. But there are only a few cases of maternity at 15 years.





## SHILLONG.

### Written Statement of Mr. ABDUL MATIN CHAUDHURY, M.L.A., Bhadeswar P. O., District Sylhet, Assam.

In Assam, there has hardly been any vocal and persistent demand for a change in the present state of law as to the Age of Consent. The feeling of dissatisfaction, more or less faint and practically inarticulate, is confined to a fraction of the English educated class only. Nevertheless, an advance may be justified on moral and medical grounds. The enlightened conscience of the community rebels against social customs and institutions that are responsible for producing a host of girl-mothers, leading inevitably to the physical degeneracy of the race. That India should lag behind the progressive countries of the East and West on vital questions of social legislation is felt by many as a slur and a reproach, and a desire is not wanting to bring it into line with the other civilized countries. But I must here interpose a note of caution and warning. Any change, that might be contemplated in the existing law, must pay due regard to the innate conservatism of the Indian masses, their intense loyalty and attachment to the ancient inherited traditions and customs, which in some cases have acquired a quasi-religious sanction. The advance must be slow and gradual, hedged in with adequate safeguards against abuse.

3. The law as amended in 1925 had no perceptible effect in reducing cases of rape outside marital state. As one of the means of making it more effective, I would suggest the raising of the Age of Consent for cases outside marital state to 16.

4. I am not sure that people in rural areas are even aware that there has been a change in the law in the year 1925. It has neither been effective in postponing the consummation, nor putting off marriage beyond 13. It has, of course, been an encouragement to social reformers, a stimulus for further efforts in this direction. Steps should be taken to secure wider publicity for the amended legislation and bring it to the notice and knowledge of the masses through active social propaganda.

5. Girls in our part of the country attain puberty generally at the age of 12 or 13. It does not differ in different castes, communities and classes but differs according to the physical constitution of the girls.

6. Cohabitation before puberty is rare, but soon after puberty is not uncommon amongst Muhammadians of the cultivator class. If the girl has attained puberty before 13, and is married, consummation is seldom postponed. I do not think such cases ever came before the Court. Social and economic circumstances compel the gentry to defer the marriage of their girls, who are now seldom married before their 15th year. So a breach of law in their case is rather an exception.

7. There is no injunction in Islamic laws favouring or encouraging early consummation of marriage.

8. I do not consider that the attainment of puberty is sufficient indication of physical maturity to justify early consummation of marriage. Though I am inclined to think that 16 is probably the age at which a girl's physical development may be considered enough to justify such consummation, without injury to her own health or that of her progeny, for the present I am not prepared to recommend the raising of the age of consummation beyond the 14th year, as the advance, as I have already stated, must necessarily be cautious, along the lines of least resistance, without bringing the law in sudden and violent conflict with the long-established customs of the land. The public opinion will hardly countenance any abrupt departure.

Having regard to the illiteracy and want of general education amongst women, "intelligent consent to cohabitation with due realisation of consequences" can scarcely be expected from any but the educated few, even at considerably advanced age.

12. High maternal and infantile mortality can, I think, be partially attributed to early consummation of marriage, though other factors such as lack of knowledge and observance of gynecological law, low vitality, inadequate attention to conception, are also contributory to it.

13. The development of public opinion, if any, in favour of the extension of the Age of Consent since the amendment of the law in 1925, is confined to educated section of liberal and progressive views only.

14. Women in our part of the country are used to the early consummation of marriage and would look upon the possibility of postponement with anxiety and possibly with disapproval. The doting mother of the bridegroom is more anxious to see the early birth of a grandchild and is unconscious of the baneful effect on the health of the bride.

20. The penal legislation fixing the minimum age of marriage would be more effective than legislation fixing a higher Age of Consent for marital cases; for in the former case, the offence will be committed in public and is liable to prompt detection. But the latter alternative will, I believe, be more in consonance with the public opinion in Muslim Community, amongst whom Mr. Sarda's Bill has received scanty support.

21. I would mainly depend on the spread of education and social propaganda as conducive to the progress of social reform. Legislative interference in social matters should be strictly limited, and should not be resorted to except in cases of imperative urgency. Even where a law is passed, as in the present case of fixing the Age of Consent within marital state, I would attach greater importance on the educative value of such legislation rather than on the drastic application of its penal provisions.

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### **Oral Evidence of Mr. ABDUL MATIN CHAUDHURY, M.L.A., Bhadeswar P. O., District Sylhet, Assam.**

*(Shillong, 14th December, 1928.)*

*(Rai Bahadur Pandit Kanhaiya Lal, Vice-Chairman, presided.)*

*Mr. Kadi.* What is the usual age of marriage amongst Muhammadans here?

*A.* Amongst the gentlemen classes it is 15 to 18, and among the poorer classes it is earlier. Amongst them it is 12, 13 or 14.

*Q.* What is the age of puberty generally here?

*A.* 12 to 13.

*Q.* In the case of the poor classes when marriage takes place at 12 or 13, when does consummation take place?

*A.* Immediately after marriage if puberty has been attained.

*Q.* Among the richer classes?

*A.* Consummation is immediately after marriage because marriages are celebrated later.

*Q.* Amongst Muhammadans what is the usual age at which girls become mothers in this part of the country?

*A.* 14, 15 or 16.

*Q.* Have you noticed any evil effects both on the mother and the child due to early maternity?

*A.* The children are sickly and weak, and not fully developed.

*Q.* What age would you fix for the age of marriage of girls?

A. I will not fix any age for marriage of girls. I would leave it open to the people to marry at any age they like.

Q. What age would you have for the Age of Consent?

A. Inside marital cases 14, and outside 16.

Q. Do you think that 14 is a safe age for maternity?

A. I have said "I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify early consummation of marriage. Though I am inclined to think that 16 is probably the age at which a girl's physical development may be considered enough to justify such consummation without injury to her own health or that of her progeny, for the present I am not prepared to recommend the raising of the age of consummation beyond the 14th year, as the advance, as I have already stated, must necessarily be cautious, along the lines of least resistance, without bringing the law in sudden and violent conflict with the long-established customs of the land. The public opinion will hardly countenance any abrupt departure".

Q. On the other hand we are told that 14 is not a sufficient age and raising the age from 13 to 14 will not give any material protection to girls, and that if you want to make any legislation you should not make it piecemeal.

A. You want a legislation which you want to enforce strictly. You enacted a law in 1925 and made the age 13. It is a dead letter. My own idea is that this legislation should not be enforced very strictly except in emergent cases.

Q. You are for raising the Age of Consent and not for a marriage law. But you yourself admit that the Age of Consent law has so far not been effective. If there is no marriage law, what measures would you suggest for making the law of the Age of Consent effective?

A. Fixing the age of marriage would be more effective than raising the Age of Consent. But Muhammadan opinion will not support the fixing of an age for marriage. Therefore the only alternative is to raise the Age of Consent.

Q. But what would you suggest for making the law of the Age of Consent effective?

A. I would suggest social propaganda. People do not generally know the law.

Q. What age would you have for the Age of Consent outside marital cases?

A. I would have 16; but I do not mind going up to 18.

Mr. Shah Nawaz: You say that amongst poorer classes girls attain puberty at about 12 and consummation takes place soon after that, say at 13. Do you not think that if a boy and a girl are thrown together they will consummate the marriage in spite of your proposal to raise the age to 14?

A. Generally they will.

Q. How are you then going to make it effective?

A. I put greater emphasis on the educative value of the law.

Q. Do you not think that your proposal to raise the age to 14 will remain a dead letter?

A. However, it will have some educative effect.

Q. Why are you against fixing the minimum age of marriage when you yourself admit that that would be a more effective method?

A. Just as the legislature should represent the views of the public, I represent the opinion of the Assam Muhammadans whom I represent.

Q. What is your own personal view?

A. I think that Government should interfere as little as possible in social matters.

*Q.* Why are you against it? Is it because you think that it will ultimately interfere with the Muhammadan law?

*A.* Yes; it might. The general feeling amongst the masses who have been influenced by the recent Fatwas is that the Government is going to interfere in social matters.

*Q.* Do you personally admit that it is not against Muhammadan law?

*A.* I admit it is not. My own personal objection is that I do not want the legislature to interfere in social matters.

*Q.* Supposing early consummation and early maternity have been found to be evils and are followed by grave results, do you not think that it is the duty of the State to interfere?

*A.* I do not consider it to be of such a serious nature as to justify such interference. The question is one of early consummation and not of early marriage.

*Q.* Do you know that in Egypt there is a law fixing the minimum age of marriage?

*A.* It may be so in Egypt. But I am not aware of the conditions prevailing in Egypt.

*Q.* Supposing we come to the conclusion that early marriages are bad because they are followed by early consummation, that the girls should be protected in the interests of the country, and that immature motherhood should be stopped, would you still object?

*A.* Your supposition will hold good only if early marriage is followed by early consummation. But if it is not followed by early consummation, I would not object to early marriage.

*Q.* You yourself admit that it will generally be followed by early consummation and yet you do not want to fix the minimum age of marriage. Why is it so?

*A.* That is why I have suggested the raising of the Age of Consent.

*Q.* What is your opinion of the law of King Amanullah in Afghanistan prohibiting polygamy in the case of officials?

*A.* Conditions in India and Afghanistan are different.

*Q.* Do you think that conditions are such in India that the State should not interfere?

*A.* What do you mean by the State in India?

*Q.* We members constituting the Legislative Assembly.

*A.* I do not quite admit that the members of the Legislative Assembly, as it is at present constituted, have got any right to interfere in social matters unless there is any exceptional urgency about it.

*Q.* Is it your opinion then that this is not a matter of exceptional urgency so as to require legislation by the State?

*A.* When it is not favoured by the Muhammadans, I do not think that anybody has a right to enforce it.

*Mr. Bhargava:* I will give you a premise. Medical opinion generally speaking says that if a girl has consummation and maternity below 16 the girl as well as the progeny suffer. Do you think that this by itself constitutes a grave state of things so as to require State interference?

*A.* There is another side to that question. Generally in this part of the country girls attain puberty at 12 or 13. Supposing you postpone consummation for about 3 years, it might be attended with moral evils.

*Q.* Do you mean to suggest that the mere attainment of puberty evokes a very strong desire in a girl for sexual intercourse?

*A.* I cannot give any definite answer to the question whether the urge is very strong or not. My own impression is that at 14 the desire in the girls is pretty strong. I see generally girls getting married, and after marriage consummation is very seldom postponed.

Q. It may be that it is difficult to postpone consummation after marriage. But if it is desirable to postpone consummation, we must devise some means by which we can postpone consummation.

A. In my opinion postponement of consummation for a pretty long time after marriage would be attended with graver results.

Q. So far as the physical side is concerned, I hope you will agree that it is desirable to postpone consummation as much as possible?

A. I do not know that.

Q. Supposing medical opinion is unanimous on that point?

A. Still I would consider the moral side.

Q. You say that you would raise the Age of Consent in marital cases to 14. Do you think that the public is sufficiently advanced to accept 14, and not more than 14?

A. Yes.

Q. If I tell you that in various parts of India there are large communities even now who practise late marriages say after 15 or 16, will you then agree that public opinion is an expression to which different people attach different meanings?

A. Nobody forces them to lower that age. There are also people in my part of the country who do so, but I do not want them to come down to 14. Though I do not want that consummation should be very early, yet I do not want it to be very much more than 14.

Q. Then would not you raise the age at all?

A. I do want it should be 16; but I would bring it about by social propaganda. But when it is a question of forcing people I do not think you should go to more than 14.

Q. Are you not forcing it even if it is made 14?

A. Yes; to a certain extent. It is all a question of degree.

Q. If you make an advance do you think there will be agitation?

A. Yes.

Q. Do you think that in the national interests we should face it?

A. My objection to it is not on the score of agitation.

Q. Therefore may I take it that so far as agitation is concerned you would not care if in the national interests it is found necessary to raise the age to 16?

A. I said at the very outset that I am not very much in favour of legislation interfering in social matters.

Q. According to you then, do you think that there will be agitation even at 15, and even at 14?

A. Yes; even at 13 there will be agitation.

Q. So far as agitation is concerned, you admit that by itself it does not constitute a reason why legislation should not be effected. Your objection is therefore on the ground that the Government should not interfere in social matters.

A. The interference should be minimum.

Q. By Government may I take it that you mean the Legislative Assembly and the Council of State, and also that you think that they are not competent to interfere in social matters as they are not fully representative?

A. What I say is that their customs are so different that I do not want people who have nothing to do with Muhammadan society to go and dictate to them that the age of marriage should be fixed. I object to Sarda's Bill saying that Muhammadans should marry their daughters at a particular age. I can understand all this if the Legislature is a body consisting of Muhammadan members alone.

Q. Do you realise that if Muhammadans or Hindus were to enact laws in their respective bodies, social legislation would be very difficult? Suppos-

ing there is Muhammadan law administered according to the Quran, and there is Hindu law administered according to the Hindu law, do you not think that social legislation would then be well-nigh impossible? Do you not think that in that case the whole Penal Code will have to be amended?

A. My point is that there should be religious neutrality.

Q. Do you not think that a national assembly composed of Hindus and Mussalman can fix the age?

A. I do not think they have got a right.

Q. Then who will do it?

A. It should be done by social propaganda and public opinion.

Q. Then do you think that social propagandists have got a right to make changes in religion and not the legislature?

A. Not the legislature as at present constituted.

Q. But do you think that social propagandists as at present constituted can change the religious practices?

A. I do not say that they have a right to change the religious practices, but they can change public opinion if people agree. Formerly there was polygamy amongst the Brahmins of Bengal. But social propaganda has brought about a change and it is not practised now.

Q. Do you think that propaganda has in any way been effective in bringing about a change so far as marriage is concerned?

A. It has not been effective.

Q. How then will it be effective now?

A. I think it ought to be effective.

Q. Supposing we think that it will not be very effective and it would take a hundred years to stop this evil of early marriage, do you not think it necessary to stop it by law?

A. I think that early marriage is an evil only if it is followed by early consummation. I do not want legislation fixing an age of marriage.

Q. You yourself admit that if early marriages are allowed it is difficult to stop early consummation. Therefore the real remedy lies in stopping early marriages. Is it not?

A. I admit that as a legislative measure fixing the age of marriage would be more effective.

Q. Then why do you not say so?

A. We do not want it, because we do not want interference.

Q. Do you think that we should not interfere with it, because you think that it will be interference with religion?

A. There is no religion about it. Even as a social custom I do not want that there should be interference.

Q. What will you do to change social customs if they are bad?

A. I would not like that they should be changed by the Legislative Assembly. I would leave that to be done from inside.

Q. How would you change this Legislative Assembly to make it competent to deal with bad customs?

A. I do not think it can be changed.

Q. Do you think that Sati and infanticide should flourish now? Do you not realise that if there is a national loss of health or national deterioration as a result of some bad custom, the Government should interfere?

A. If it is conclusively prove that it is the only factor for the deterioration of the race, there may be some ground for it; but this is only one of the many factors.

Mr. Mitra: Are you on principle opposed to social legislation?

A. I am opposed to the legislature interfering in social matters.

Q. That is you are on principle opposed to legislation by the State on social matters.

A. Except in exceptional cases.

Q. What cases would you call exceptional?

A. It depends upon the nature of the case.

Q. Do you not think infantile mortality and early maternity in any way serious?

A. They are only one of the causes for the deterioration of the race.

Q. If in medical opinion early marriage is considered as one of the potent causes of infant mortality will you accept it as one of the urgent cases which require a remedy?

A. But there is the other side of the question also. If you postpone consummation for a pretty long time after puberty it may be attended with evil results.

Q. Are you in favour of legislation fixing the Age of Consent?

A. Yes; I would fix the age at 14.

Q. When do girls usually attain puberty?

A. Between 12 and 13.

Q. Do you think that girls are sufficiently developed a year after puberty?

A. No; they are not.

Q. Then though you are personally for fixing the age at 16, you think that if consummation is delayed for a long time after puberty, girls might go astray and therefore you fix the age at 14?

A. Yes.

Q. If you fix 14 for the Age of Consent how will the Muhammadan community take it? Will they take it as an interference with Muhammadan religion?

A. I do not think they will.

Mr. Mudaliar: I understand that you are suggesting 14 as the age of consummation merely as a matter of compromise with orthodox and unadvanced opinion though you would ultimately raise it to 16. This is merely a first step towards raising it subsequently. Do you think that when the time comes for an advance the moral danger would have passed away?

A. I would put it the other way. When the moral danger becomes less then will be the time for raising the age to 16.

Q. Do you expect that there will come a time when by education and by other means the moral danger would decrease?

A. Yes.

Q. May I take it then that you are not on principle against social legislation?

A. But the question of degree of the evil is a matter of opinion.

Q. Do you recognise that there are cases where the legislature must interfere?

A. I have always said that there are exceptional cases.

Q. I heard you say that the present Legislative Assembly is not properly constituted for the purposes of social legislation. Then what should be the constitution of the Assembly so that it may be competent to deal with social matters?

A. In a country like India I cannot conceive of any constitution which will make it possible for the Assembly to take up social legislation.

Q. Supposing it were conceded that in social matters only the Muslim members of the Assembly should vote on matters concerning Muslims, and only the Hindu members should vote in matters concerning Hindus, supposing there was that proviso in the constitution of the Assembly then would you be in favour of social legislation being undertaken by such a body?



A. Then my objection would be less.

Q. You suggest fixing the age of consummation at 14. Have you considered the difficulties of enforcing the law?

A. I have not considered the legal difficulties.

Q. Have you considered the practical difficulties? Who do you think ought to be the complainant in case there is a breach of the law?

A. All I can say is that the police should have nothing to do with it.

Q. Who do you think should complain?

A. The nearer relations of the girl.

Q. The nearest relations would naturally be the parents. Do you think that the parents would complain in a matter of this kind?

A. No.

Q. Then the law would be inoperative.

A. I said it would be ineffective. It will only have an educative value.

Q. What do you think ought to be the punishment in cases of this kind?

A. Sending the husband to jail in cases like these does not appeal to me.

Q. Would you have fine only?

A. Either fine or some sort of security for not committing the offence a second time. I think it should be something like that.

Q. If the complainant is to be the nearest relation and the punishment is to be very much lighter than what it is at present, then the law can only be effective as an educative weapon.

A. I cannot give any definite opinion on this question. It just struck me that sending a husband to jail would ruin the family.

Q. Are you at all in favour of postponing consummation after puberty?

A. I am not for postponing it for a pretty long time.

Q. What is the longest period after puberty that you would allow?

A. I have said I would have it at 14.

Q. Apart from any compromise, what is your personal opinion as to the safe age for consummation?

A. As a theoretical proposition I would have 16.

*Mrs. Nehru:* What is the population of the Muhammadans in Assam?

A. It is about 20 to 22 lakhs, i.e., about 28 to 29 per cent. of the total population.

Q. Are there a great many Muhammadans living in Shillong?

A. There are some officials only living in Shillong. Their number is not many.

Q. What is the state of education of Muhammadan women here?

A. We are very backward.

Q. Are there any girls' schools here?

A. I am talking of Sylhet. In Sylhet there are about a dozen girls' primary schools but I do not think there are many Muhammadan girls there.

Q. Do women go in for higher education?

A. Higher education amongst our women is only up to the 8th or 9th class.

Q. Is purdah observed?

A. It is very strongly observed even in the villages. I will just refer to an incident in this connection. At the Surma Valley Students' Conference held here recently one of my cousins took his wife with him. It has created a great stir in Muslim circles here. There have been protest meetings and Fatwas against such a thing. Purdah is very strong here. In the villages the cultivator classes do not observe purdah, but the Bhadrakul classes do observe it.

**Q.** You have said that amongst the Bhadralog classes marriages take place between 15 and 18 and amongst the villages between 12 and 14. In these cases does any time elapse between the marriage ceremony and the consummation of marriage?

**A.** There is no postponement of consummation after marriage. The girl is sent to the husband immediately after marriage.

**Q.** Have you any knowledge of breaches of the law of the Age of Consent coming to court?

**A.** There have been no cases like that coming to court, though such cases do happen.

**Q.** What do you think is the main reason for these cases not coming to court?

**A.** No one wants that these things should be ventilated in courts, because the prestige of the family would suffer.

**Q.** Do you think that public opinion has not been sufficiently educated on this point and they do not really want to root out this evil?

**A.** Practically it is so.

**Q.** May I take it that you are against raising the Age of Consent to more than 14 because you fear there will be moral evils?

**A.** Yes; that is one of the grounds of my objection.

**Q.** Can you tell me whether you have had any experience of such evil results?

**A.** My own idea is that the girls of the Bhadralog classes live in a lofty moral atmosphere. In their cases therefore if there is postponement of consummation there will not be much harm. But in the villages the moral atmosphere is not so high and there is a greater danger of the girls going astray.

**Q.** Have you come across any cases which can justify this apprehension in your mind?

**A.** Usually after the marriage consummation is not delayed. Amongst the Bhadralog classes where the marriage is late there is a lofty moral atmosphere. But amongst the villages marriages are early and consummation follows immediately after. This is done so that there might be less occasion for girls going astray.

**Q.** You say that advance if any should be hedged in with adequate safeguards against abuse. Can you give us any definite proposals about these safeguards?

**A.** All I can say is that it should not be an instrument in the hands of the police.

**Q.** Who should be the complainant in cases of breaches of the law?

**A.** The complainant should be the nearest relative of the girl.

**Q.** Have you any objection to the case being taken up by the police after the complaint has been made?

**A.** No.

**Q.** Do you think that people will open themselves to the risk of being investigated?

**A.** If the nearest relation of the girl makes the complaint he will take everything into consideration. Perhaps he will not even go to the court.

**Q.** Really speaking he will never make a complaint and the police will never have a chance of investigating.

**A.** It may be so.

*Chairman:* You say that these marital cases should be non-cognisable. Under the present law below 12 the cases are cognisable and above 12 non-cognisable. Would you keep that distinction or would you make any alteration?

**A.** I would rather keep that distinction.

*Q.* Do you not think that by making these cases non-cognisable between 12 and 14 you will be taking away the chances of detection of the crime? Do you think any person will complain?

*A.* We thereby narrow the chances of the abuse of the law.

*Q.* Supposing we require that these marital cases should be enquired into by police officers of the higher grade. Do you think that the chances of abuse will be much more minimised?

*A.* I think it will be minimised to a certain extent, but not much.

*Q.* Do you think there will be danger of the higher officer abusing his powers?

*A.* I should still apprehend that.

*Q.* Supposing as a further safeguard we require that in all marital cases there should be a preliminary enquiry by a magistrate before summons or warrant in order to eliminate all possible causes of vexatious or false prosecutions, would it be a sufficient safeguard?

*A.* I do not think it is quite satisfactory.

*Q.* Can you then suggest any measures for the detection of the crime?

*A.* I cannot think of any for the present.

*Q.* Would you have vigilance societies in towns and rural areas to watch and look after these cases and bring them to light?

*A.* It does not appeal to me.

*Q.* Would you like to authorise social reform organisations to look after these cases and report breaches?

*A.* I cannot support any inquisitorial method of that kind.

*Q.* Have you got village pauchayats in Assam?

*A.* We have got Village Panchs.

*Q.* Do you think they can be entrusted with this work?

*A.* They should not be entrusted.

*Q.* Supposing these cases occur, would you recommend that they might be made compoundable in order that good relations might be restored between the husband and the wife?

*A.* Yes; these cases should be made compoundable.

*Q.* Would you further recommend that in serious cases in which there is injury, the cases might be made compoundable with the sanction of the court?

*A.* Yes.

*Q.* Would you make it compoundable irrespective of the age of the girl?

*A.* I would require sanction for compounding if the age of the girl is below 12.

*Q.* It has been suggested that these marital cases should not go to the ordinary courts, and instead of the two different forums which we have at present, these might go to a matrimonial court consisting of a magistrate and two non-officials so that they might inspire better public confidence. What is your opinion?

*A.* I do not think there is any advantage in that.

*Q.* Another suggestion that has been made is that in order to help the discovery of these cases we should have a system of registration of marriages. The marriages might be reported to a prescribed authority, and the names of the marrying parties and their ages and other particulars will be entered in the register. Do you think it will work?

*A.* I think it will work hardship on the people. Poor people cannot afford to go to distant places to register their marriages.

*Q.* Is there not at present the system of registration of births and deaths?

*A.* But in the villages reports are made to the village Chaukidar and he in his turn reports it to the Thana.

**Q.** Is there any obligation on the parents in the case of births?

**A.** In the villages I do not think there is any such obligation.

**Q.** In any case when you have got the system of registration of births, where is the difficulty in the registration of marriages because marriages will be fewer?

**A.** If there is a system of registration of births and deaths then of course in the registration of marriages there will be less difficulty. But here in most places there is no system of registration of births and deaths.

**Q.** What is the real difficulty you apprehend in enforcing the system of registration of marriages?

**A.** It will create additional and unnecessary trouble.

**Q.** Supposing we require that the marriages should be reported to the heads of Panchayats and the village Panchayat is required to maintain these registers, will it work?

**A.** But what is the ultimate object in registering these marriages?

**Q.** As an auxiliary to the law of the Age of Consent or age of marriage. If there is registration of marriages there will be some information available which will help the officers concerned in ascertaining whether the law has been infringed.

**A.** The procedure appears to be rather cumbrous. I do not think it will appeal to the public.

**Q.** But you have not given us any constructive proposal regarding detection.

**A.** I have already said I do not advocate these inquisitorial methods.

**Q.** But this is only about the registration of marriages.

**A.** It is rather a subsidiary part of it and I do not very much like it.

### **Written Statement, dated the 6th August 1928, of Rai Bahadur M. K. GUPTA, Shillong.**

1. There is certainly dissatisfaction with the state of law as to Age of Consent as contained in sections 375 and 376 of the Indian Penal Code. The dissatisfaction is mainly confined to the educated members of the community but the general illiterate masses are indifferent as to what provision the law contains.

2. I am not in favour of retaining the law of the Age of Consent as it is but I am strongly in favour of making an advance on the present law. My reasons are that the present provisions of law as to the Age of Consent are not justified by actual circumstances of the girls of tender age and they are not at all qualified and competent intelligently to form an opinion as to the reasonableness or otherwise of the consent sought. An advance in the Age of Consent will enable girls of maturer age to form intelligently their own opinion as to the effects of the consent and to protect themselves against tyranny and illegal attempts at violation.

3. There are cases of seduction and rape in this part of the country but I should not say that the crimes are very frequent among the people of upper sections of the community. They are frequent mostly among the lower classes of Muhammadans and the lower castes of the Hindu society specially in Assam where cases of seduction and rape are reported from areas occupied by immigrant Muhammadans and from members of lower castes of Hindu community among whom there is more or less of a practice of seducing girls, elopement of girls or I should say rather the forcible taking away of girls with or without consent to jungles for days together and then to come back to make amends to the injured parents by offer of pecuniary compensation in order to make the marriage complete. The amendment of the law made in 1925 undoubtedly reduced cases of rape outside the marital state or

the improper seduction of girls for immoral purposes but the effect is not to the extent as was desired. It is difficult to devise measures to make the law effective except through education of the masses and infliction of severer and deterring punishment specially in cases of rape of a brutal nature.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has undoubtedly tended to protect the married girls against cohabitation with husband by postponing the consummation of marriage and by stimulating public opinion in that direction and in certain cases by putting off marriage beyond 13. Education and propaganda are the only measure that I can suggest for effective enforcement of the provisions of the law.

5. In this part of the country girls generally attain puberty between 15 and 16 years and in very rare cases between 13 and 14. This differs in different castes and communities or classes of society as I have reason to believe that in upper classes conditions of living and surroundings tend more towards attaining puberty at a comparatively higher age than in the case of girls in rural areas and in lower castes and lower strata of society. The surroundings in rural areas and among the lower castes are such as would excite tendencies towards early and unnatural attainment of puberty before one's age.

6. Cohabitation before puberty is uncommon and rare but common and in certain cases compulsory after puberty. Compulsory I say as general beliefs enjoin that consummation of marriage must take place as soon as the wife attains puberty and that one will be condemned to eternal perdition if he fails without reasonable excuses through illness or otherwise to live with his wife every month for a certain time after her menses. Cohabitation is rare before the girls complete 13 years. Hardly any cases come to court.

7. The practice of early consummation of marriage *at but not before* puberty is attributable to some sort of religious injunction or belief as I have already stated above.

8. The *Garbhadhan* ceremony is performed in this part of the country but the practice of performing the ceremony is slowly dying out among the educated and more advanced sections of the community. It does not coincide with but is anterior to the consummation of marriage. Cohabitation is rare before puberty and no *Garbhadhan* ceremony can be performed before puberty is attained. Attainment of puberty is celebrated by what is known as *Garbhadhan* or second marriage ceremony.

9. I certainly do not consider that the attainment of puberty is sufficient indication of physical maturity to justify the consummation of marriage. Attainment of puberty is only an indication of a beginning in the growth of physical maturity but it is not certainly full physical maturity to justify consummation of marriage. I should think that three to four years after the attainment of puberty should elapse before the girl can be considered to have attained sufficient physical development to justify consummation of marriage without injury to her own health or to that of her progeny.

10. In my opinion a girl in India cannot be considered before at least 18 years of age to be fully competent to give an intelligent consent to cohabitation with a due realisation of consequences. In fact, I should think 20 years to be the proper age for a girl to enable her to form an intelligent opinion as to the consequences of such consent to cohabitation.

11. I am not a professional man but before our eyes we have seen many cases and we see many cases around us where early consummation of marriage—cohabitation before puberty, sometimes after puberty but before full physical development of the girl—resulted in the entire breakdown of her health, early death, production of deformed offspring and offspring of very weak and defective constitution. I regret I have not details of age and injury sustained readily available to furnish here.

12. I certainly do consider early consummation and early maternity responsible for high maternal and infantile mortality and also for intellectual and physical deterioration of the people.

13. As I have said the illiterate general masses remain unaffected by the provisions of law but certainly the general opinion among the educated and more advanced section of the people has changed for the better since the amendment of the law in 1925 and distinctly favours an extension of the Age of Consent in marital and extra-marital cases now.

14. Women in times gone by certainly favoured early consummation of marriage for their children and were delighted to see grandchildren at a comparatively early age of their own children but the circumstances, surroundings and education have all combined to transform this opinion into one in favour of postponement of consummation of marriage for their children until full attainment of physical development. The results of early consummation of marriage have demonstrated in both urban and rural areas the evil effects, undesirability and ruinous consequences of early consummation and this mainly has changed the opinion of the womenfolk for the better and for a change in the practice and customs.

15 & 16. There have always been difficulties experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code but I regret I am unable to suggest any effective and practical measure to remove or minimise these difficulties. In the case of members of the upper castes or classes of society there is always available a record of the date of birth in the shape of horoscope or something of the kind. But in the case of members of the lower castes there is no such record but if a registration of birth could have been made effective and registers of birth with certain prescribed details as to name, date and parentage of children registered in villages could have been maintained with village officials from which true extracts could have been supplied at a small fee the difficulties would have been removed but how far this is practicable under the present circumstances I am unable to say. With reforms in the constitution of Government and formation of responsible and representative institutions in urban as well as in rural areas, maintenance of such registers for the registration of births and deaths as are maintained specially for the members of Christian community might be considered and tried. This is the only means to remove and minimise the difficulties in the way of determining the age of girls and in the absence of this we must as heretofore rely on medical evidence which gives only approximate age and it is not improbable that that opinion may err either towards increase or decrease by two to three years in the age of a person.

17. Yes, I would separate extra-marital and marital offences into different offences but I would leave the nature and the amount of maximum punishment for offences of each class as in the present provisions of the law.

18. I would make no difference in the procedure of trials for offences within and without marital state as in my opinion such differentiation may lead to undesirable consequences.

19. I have no suggestions to make as regards safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion.

20. I do consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. In my opinion an attempt to fix by legislation the minimum age of marriage will unduly interfere with social customs and might evoke a tremendous opposition from the orthodox section of the community. If the Age of Consent is raised and the parties to a marriage are not allowed to cohabit and to have early consummation of marriage before a certain age after attainment of puberty the objects aimed at will in my opinion be fulfilled. I would therefore deprecate an attempt to fix by legislation the minimum age for marriage and I consider that fixing the Age of Consent by legislation would be more in consonance with public opinion in this part of the country than an attempt to fix the minimum age for marriage.

21. I would more prefer to rely on the progress of social reforms by means of education and social propaganda to secure the object in view rather

than on the strengthening of penal law. But at the same time I do think that law should provide for what the progress in social reform would indicate that is penal law should be amended and strengthened on the strength of the progress of social reform attained by propaganda and education in order to give the progress substantial assistance to maintain and to enable further progress in the same direction.

### Oral Evidence of Rai Bahadur M. K. GUPTA, Registrar, Government Secretariat, Shillong.

(Shillong, 14th December, 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you the registrar-in-charge of the office of the Government Secretariat in Assam.

A. Yes.

Q. How long have you been Registrar?

A. 14 years.

Q. How many years have you been in Shillong?

A. For the last 30 years.

Q. Are you a resident of Sylhet?

A. Yes.

Q. Can you tell us amongst what communities early marriages are practised in this part of the country?

A. Formerly even amongst the *Bhadralog* classes there were early marriages; but that practice has ceased now. Now-a-days the age of marriage of girls has risen. Parents have been compelled to marry their girls late for want of proper bridegrooms. In this connection I might say that my own family has suffered because of early marriages. My sisters were married very early when they were about 10 with the result that their health broke down and their progeny are miserable creatures. Generally amongst the lower classes even now marriages are performed early.

Q. What is the age of marriage now amongst the *Bhadralog* classes?

A. 13 to 17.

Q. What is the usual age of marriage among the lower classes?

A. It ranges from 10 to 13.

Q. Can you tell us what is the usual age of marriage among the hill tribes?

A. Here in Shillong girls of 16 not having attained puberty are described as 'Kanya'.

Q. Are you referring to Khasi girls?

A. I am referring in particular to Khasi girls.

Q. What about the others?

A. I have intimate personal knowledge of Khasis only.

Q. You tell us among the lower classes the age of marriage is between 10 and 13. Can you tell us what these classes are?

A. They are cultivators.

Q. Hindus and Muhammadians?

A. Both.

Q. When does consummation take place among the higher classes? Is the *Garbhadhan* ceremony performed?

A. The custom varies among the Brahmins. In Assam proper the girl is not sent until she has attained puberty, but in Sylhet the girl is sent to the husband's house immediately but she is not always allowed to cohabit. She goes as on a ceremonial visit.

**Q.** I understand you to say that after puberty there is *Garbhadhan* ceremony. How long after puberty does it take place? Is there any interval allowed?

**A.** There is some but not long. It is between one and two years.

**Q.** You know menses are irregular in the beginning and after some time only they become regular. In Madras for instance we have found that the people postpone consummation for some time till the menses have become regular. Is that the practice here also?

**A.** 6 months or a year are allowed to elapse generally.

**Q.** What about the lower classes?

**A.** They observe no fixed rule. They allow no time to elapse after puberty.

**Q.** Both among Hindus and Muhammadans?

**A.** So far as I know.

**Q.** May I know in what districts you have worked?

**A.** I have been to other districts but my knowledge about them is not as intimate as with regard to my own.

**Q.** In your statement you say you have come across injury resulting from early consummation and early maternity. Do I understand that this injury is both to the mother and the child?

**A.** Yes. I have instanced my own sister's case.

**Q.** What is the remedy that you suggest for this state of affairs?

**A.** Raising the Age of Consent and fixing the age of marriage. Both of them are co-related.

**Q.** What is the age that you would recommend for marriage?

**A.** I am a Brahmin myself. We have got a civil law that prescribes 14 years. But as a matter of fact, we do not follow that law. I married when my wife was 22. My own opinion is that the age should be between 18 and 20. The minimum age should however be fixed at 16 at least.

**Q.** Do you think people generally would accept that proposition?

**A.** In my statement I have said that I do not advocate fixing the age of marriage, but I am fully in favour of fixing an Age of Consent.

**Q.** In other words in order to conciliate orthodox opinion you would not have a law fixing the age of marriage but would only fix the age of consummation.

**A.** Yes.

**Q.** Would you be in favour of fixing the minimum age of marriage at 14 as proposed by Mr. Sarda in order to reduce the orthodox opposition to a minimum?

**A.** If any is to be fixed, 14 is not bad. It will suffice for the present.

**Q.** What age would you recommend for consummation?

**A.** I have said before 18 a woman cannot give an intelligent consent.

**Q.** If the minimum age of marriage is fixed at 14, would people be able to look after their girls and feed and maintain them till that age? Would not economic and other considerations stand in the way?

**A.** It is very difficult to answer that question. Times have changed and the changing circumstances are compelling people to keep their girls unmarried even now up to 18.

**Q.** We went to a village near Dacca, where the people said that they had many children and they could not keep their girls long unmarried. And that as soon as a girl attained puberty they would have to be anxious, that she should be married and be no longer a burden on their resources. Taking that into consideration would you recommend a lower age.

**A.** I think it can be reasonably lowered to 16.

**Q.** Not below that.



A. No, because the girl is not sent to the husband's house till she has attained puberty. Till then no question of age arises.

Q. Do you think 16 will be generally acceptable to the people, Hindus and Muhammadans?

A. Should be.

Q. What is the age that you would recommend for extra-marital cases?

A. That should be 18, otherwise she cannot give her consent intelligently.

Q. In order to re-introduce good relations between the husband and the wife, would you like to make marital cases compoundable?

A. It is very difficult to enforce the law in marital cases. No respectable family would come forward with a complaint so far as I can understand. If I place myself in that position I will find it very difficult to go against my son-in-law.

Q. There have been two views expressed. Some people say that the girl will be ruined if the husband is punished and others say that punishment should be given so that others may be deterred.

A. I would make compoundable.

Q. With the sanction of the court?

A. Yes.

Q. Would you make the offence compoundable irrespective of the age of the girl?

A. Yes.

Q. Another suggestion has been made that all marriages should be registered not for the purpose of making the marriage valid but for the purpose of keeping a record of all marriages with the names and ages of the marrying parties.

A. That would be helpful. It is always difficult to determine age when there is a dispute. There is no horoscope kept and we have to depend upon medical opinion which always varies between 2 and 3 years.

Q. Would you therefore have a proper system of registration of marriages and births?

A. Yes.

Q. Can you tell us what is the agency which enforces registration of births in rural areas and in cities?

A. In rural areas there is no agency now but in urban areas there is an agency.

Q. What? You mean municipal boards?

A. Yes.

Q. Is it obligatory on the parents to report a birth?

A. I know fines are imposed sometimes.

Q. What about the rural areas?

A. The responsibility is upon the village chowkidar.

Q. Are there no rules requiring every parent or guardian to report the birth of a child?

A. They are not enforced, so far as I know.

Dr. Beadon: In answer to Question No. 11 you say, we see many cases around us in which early consummation has resulted in the production of deformed offspring and the entire breakdown of the health of the mother. Would you mind giving us details of one or two cases?

A. I am not a professional man and no cases come before me in that capacity. But I have seen many families where the girl and the offspring have both suffered.

Q. In the last two years how many cases have you seen? Four or five or more?

A. For the last two or three years I have not been out. I can cite two or three cases.

Q. Girls of what age?

A. 13 and 14.

Q. Were they married and what happened?

A. They became mothers at that age and they had difficulty in delivery.

Q. And was the child very weak and deformed?

A. In one or two cases.

Q. What do you mean by deformed?

A. Their legs were crooked.

Q. You have seen these cases for some long time. Do you think that the children of these mothers remain weak permanently?

A. I can't say permanently, but the growth is not like that of other healthy children of healthy parents.

Q. You think that early consummation is responsible for high infantile mortality. Have you seen cases in which the mothers have actually died?

A. Yes.

Q. How many cases have you known in the last two or three years?

A. One or two cases I have known.

Q. In what class?

A. Hindus.

Q. Were the people poor or fairly well off?

A. Neither poor nor rich. They were of an intermediate status.

Q. Could they afford food?

A. Yes.

Q. Is medical assistance fairly easily obtained in these parts?

A. It was not on account of want of medical assistance.

Q. Is there any child-welfare work done here?

A. There is one child-welfare centre.

Q. How long ago was it started?

A. About 2 years back.

Q. Have you noticed any improvement since then?

A. The only thing I can say is that the lady in charge there renders help more frequent than it was before.

Mrs. Nehru: Can you tell me whether society here is divided by caste or class?

A. Caste restrictions do exist here. The division is not by class.

Q. Is inter-marriage prevalent?

A. In West Bengal, in Sylhet, Mymensingh inter-caste marriages are allowed. There are no inter-caste marriages among Brahmins.

Q. You were referring to some age of marriage law. What is that law?

A. I was referring to Act III of 1872.

Q. But that fixes no age for all marriages.

A. No.

Q. It is only with regard to that particular marriage and not for other marriages.

A. No.

Q. Are the cultivators and the *Bhadralogs* in touch with each other? Are they same in caste and race?

A. Not quite. The division is by caste between *Bhadralogs* and cultivators.

Q. Are there any Brahmin and Vaish cultivators?

A. We have got no Brahmin cultivators. There was one case in Sylhet and it raised a storm of agitation.

Q. From whom?

A. From others. They said, a Brahmin is cultivating the land himself.

Q. Are the Vaidyas cultivators?

A. No.

Q. Who are the cultivators?

A. Cultivators are generally called Sudras in Sylhet and Assam. They are non-Aryans.

Q. Is there no connection between cultivators and *Bhadralogs*?

A. No.

Q. I suppose marriage customs are quite different amongst the *Bhadralog* class.

A. They are different. There are distinctions among the cultivators too.

Q. Are you intimate with their customs and ways of living?

A. I can't say, intimate.

Q. You refer to the Khasis marrying late and other cultivators marrying early.

A. Khasi marriage is quite different. Khasi girls choose their own husbands.

Q. Do the other cultivators also follow this custom?

A. No. Among them marriage is contracted by the parents.

Q. In your statement you refer to immigrant Mohammadans. What do you mean by that?

A. In Assam valley you find many Mohammadans who actually belong to Mymensingh and Sylhet and they have come here and colonise.

Q. You have said that the amendment of 1925 has undoubtedly reduced cases of rape outside the marital state. Have you compared the statistics before and after 1925?

A. For the sake of comparison I satisfied myself with the Police report.

Q. Is the law generally known to the people?

A. Not so well known to the masses. But this extra-marital law after some cases has become known to some extent.

Q. Do they know anything about the intra-marital law?

A. I don't think. Very few people take notice of this. Once the marriage is celebrated the people do not care to know what the age is and what the legal position is.

Q. You have spoken about rape and seduction cases. Are rape cases more or seduction cases more?

A. Seduction cases are more in the lower classes. In Assam valley girls are seduced away by some low class people and taken to the jungle for some days and then they come back and appease the hungry parents by offering money and other things and complete the marriage.

Q. This is among the cultivators or *Bhadralogs*?

A. Not among the *Bhadralogs* at all. It is confined to the lower classes.

Q. Who are lower classes?

A. Cultivators and fishermen.

Q. Do they seduce for their own purpose or for the purpose of selling them?

A. They seduce for their own purpose. Selling is practically unknown here.

Q. What is the usual age of the girls who are seduced in this way?

A. It varies. So far as I have heard they are not quite under age nor quite grown up. They are generally between 13 and 15. Sometimes they are 12 also.

**Q.** Not below 12?

**A.** I have heard of no case below 12.

**Q.** And are the offenders from among their own caste people?

**A.** Yes.

**Mr. Mitra:** May I take it that among the original tribes people there is no early marriage?

**A.** Amongst the Khasis there are no early marriages.

**Q.** So you think no legislation as regards marriage or consummation is necessary so far as these tribes are concerned?

**A.** I don't think.

**Q.** So far as the upper classes, Brahmins, Vaidyas and others are concerned, they also require no marriage law because they marry their girls late at 14 or 16.

**A.** No.

**Q.** So far as the lower classes are concerned can you speak of the Assam people also or you speak merely of the people of Sylhet?

**A.** Mostly Sylhet people, but in some cases I have referred to Assam proper also.

**Q.** Amongst the lower classes do you think marriage is always before puberty?

**A.** Yes.

**Q.** Invariably?

**A.** Mostly.

**Q.** Do you know that there is any religious idea that marriage must take place before puberty?

**A.** No.

**Q.** It is not due to any religious notion but it is merely due to custom.

**A.** Yes. About consummation after puberty there is some religious notion.

**Q.** If the girls are married late, do you know whether there is any social oppression or excommunication meted out to these people?

**A.** Those days are gone. In a few cases you may find some village talk about girls not married till very late. The sun dawned here before it did in the South.

**Q.** How would the people take the law fixing the minimum age of marriage at 14?

**A.** There may be a storm of opposition, I should say. Everybody is touchy about social matters and to have an age fixed by law for marriage would be considered to be an undue interference in social customs.

**Q.** What shape is this opposition likely to take? Will it be greater than passing some resolutions and petitioning the Government?

**A.** In some cases there will be flagrant breach of the law.

**Q.** Do you seriously think that there will be breach of the law?

**A.** In some cases. They would not care for the law.

**Q.** If they do not follow the law they will be punished.

**A.** Intentionally they will break the law. You see the spirit in these days. They would not care for the punishment. They would continue to agitate in order to get the law reversed.

**Q.** Do you think there will be Satyagraha to oppose this legislation?

**A.** It is a word imported by some party. I do not know exactly the meaning of it.

**Q.** But the Brahmins will not be affected in any way by this law?

**A.** I don't think.

**Q.** Who will lead the opposition? Do you think that the illiterate classes are advanced enough to organise this opposition?

**A.** Leaders are not wanting.

**Q.** You know very few cases are brought to light of the breach of the consent law. Could you suggest anything as how these cases could come to light or do you merely want the law not to be operative?

**A.** It must be operative, otherwise what is the good. We must educate the people first. As soon as we are advanced enough in education we should be supported by law. The percentage of literates especially among the women of all castes is so small.

**Q.** It has been suggested that the cases are not brought to courts because of the severity of punishment. Do you think if punishment is lightened more cases will come up?

**A.** I don't think so.

**Q.** If marital cases are tried in camera so that there may be less scandal, do you think more cases will come up in that way?

**A.** Even in that case very few cases will come up.

**Q.** You are against the marriage law. But you can't suggest any way of making the consent law effective.

**A.** There will be some cases, but not very many. Because of the scandal, if I can help, I will not bring any case that may take place in my family.

**Q.** So it has been suggested that the marriage law only will be effective.

**A.** But for the marriage law our opinion has first to be formed. There must be public opinion behind it.

**Q.** As regards the marriage law, you don't think it will go against the religious texts?

**A.** No. That belief about Kanyadan is gone.

**Q.** Among the uneducated people?

**A.** Even the uneducated people do not follow that shloke '*Asht Varsha Bhavet Gouri*' and so on.

**Q.** Do you think there will be no religious objection?

**A.** No. It will be sentimental mostly.

**Q.** Don't you think if we fix a marriage law giving exemptions in hard cases it will be accepted by the people?

**A.** That will be more acceptable.

**Q.** Do you think if the age is not very high, the opposition will be lessened?

**A.** Yes.

**Mr. Bhargava:** May I know what is the percentage of cases in which child marriage takes place, considering the entire population?

**A.** It is very difficult to give exact figure. It may be about 30 per cent.

**Q.** Then is it confined only to the cultivators?

**A.** Mostly.

**Q.** There are a few cases among the higher castes?

**A.** Yes.

**Q.** These classes are not literate?

**A.** Generally not.

**Q.** You have said that there is no chance of religious feeling being violated as they have none in the matter.

**A.** No.

**Q.** So practically if you raise the Age of Consent or fix the minimum age of marriage there will be some small agitation.

**A.** Yes, any action will create some agitation.

**Q.** Do you realise that if there is no marriage law and there is consent law only it will not be effective?

**A.** It will not be effective without other means.

**Q.** Would you agree therefore that agitation will be unavoidable and the consent law will not by itself be effective and it would be good to have a marriage law alongside this consent law?

**A.** It will be better of the two evils.

**Q.** You say you want there should be propaganda so far as popularising of the evil effects of early marriage is concerned. As the Government is enacting this law, would you like that the Government should undertake this propaganda work?

**A.** There may be other Sabhas of the people and the Government also may do the work.

**Q.** If the law is enacted do you think that the Government is in duty bound to carry on the propaganda work in order to make the evil effects known?

**A.** It is a primary duty of the State to educate the people. Without education people cannot understand.

**Q.** I want to know when the Government wants to enact a law about marriage and consent do you not think that it is the duty of the Government to popularise the matter?

**A.** I do consider that this is necessary.

**Q.** In your opinion if this age is raised to 16 there need not be any apprehension about the girls going wrong. Do you say this from your experience?

**A.** Yes.

**Q.** You say there are many seduction and rape cases in this part of the country. Are these cases in respect of girls below 16?

**A.** Yes, below 16.

**Q.** What is the reason that these cases are not brought to court? They are not like intra-marital cases. There is absolutely no relationship?

**A.** Some cases are brought to court. People think that they will be disgraced and therefore do not report the cases.

**Q.** You say puberty is generally attained between 15 and 16 and it is rarely between 13 and 14. You think puberty is attained at that age in the rural areas also?

**A.** In all areas I should think 15 or 16 is the usual age.

**Q.** And what is the usual age of marriage?

**A.** 13 and 14.

**Q.** It follows there is lot of consummation before puberty. Is it correct?

**A.** Yes.

**Q.** You say *Garbhadhan* ceremony takes place before consummation. What is the meaning of *Garbhadhan* ceremony then?

**A.** As soon as puberty comes, there is *Garbhadhan* ceremony.

**Q.** Suppose a girl is not married and puberty comes, when will the ceremony take place in that case?

**A.** No ceremony takes place then. As soon as puberty is attained the girl is sent to the husband's house and the *Garbhadhan* ceremony takes place. This ceremony is not observed in Assam and Sylhet.

**Mr. Shah Nawaz:** May I take it that you are against fixing the age of marriage by legislation simply on the ground that it will injure the feelings or the sentiments of some people?

**A.** Yes, that is my main ground.

**Q.** Don't you think if the sentiment is followed by evil results it is the business of the Government, the State or the Assembly to interfere?

**A.** In order to avoid the evil results a marriage law has to be enacted but as it may injure the feelings of the people I favour the consent law.

There is a feeling among the ladies here too. In a meeting at which representatives of practically all communities were present they pressed that there should be a marriage law and that the age should be fixed not lower than 16. That shows that there is the feeling in the other way too.

Q. Women want to fix the minimum age of marriage at 16?

A. Yes.

Q. What is the opinion of Brahmin girls?

A. I don't think they will agree to a marriage law.

Q. Neither men nor women?

A. No.

Q. Don't you think that if the girl goes to the husband's house immediately after puberty and they are thrown together there is likelihood of consummation taking place?

A. There is. They do cohabit.

Q. But in your statement you say, "if the Age of Consent is raised and the parties to a marriage are not allowed to cohabit and to have early consummation of marriage before a certain age" after puberty the objects aimed at will in my opinion be fulfilled. How are you to prevent boys and girls from cohabiting? You don't want to fix the minimum age of marriage and yet you have an intense desire that cohabitation should not take place early.

A. It is the parents who can prevent cohabitation. This cannot be done otherwise.

Q. But will the parents prohibit that?

A. Before puberty they always do.

Q. The girl attains puberty at about 13 and you say marriage should not be consummated till 16. Who is going to prevent consummation for three years? If you fix the minimum age of marriage the difficulty is over.

A. In Eastern Bengal there is not the custom of keeping the girl till she has attained puberty. It is so in Assam.

Q. If such custom is adopted then we can go up to puberty. Puberty may be at 12 or 13. You want that there should be no consummation till 16.

A. Puberty is not attained at 12 at all. Between 13 and 14 is the general rule.

Q. Supposing that is so, who is going to prevent consummation for two years and over?

A. I know of no method.

Q. Would you not then fix the age of marriage? That is the only effective way. If the evil is to be stopped, don't you think that we should take courage in both hands and enact the law?

A. It is very difficult to say.

Q. What is the difficulty in making the marriage law effective?

A. There was tremendous opposition not only from the orthodox but even from the advanced section of the society when that Act of 1872 was enacted.

Q. In your opinion is fixing the minimum age of marriage the only effective method?

A. The only way of stopping the evil is to educate the general public.

Q. Then, I understand this evil of marrying pre-puberty is confined only to about 30 per cent. of the people. Don't you think therefore that a large number, about 70 per cent., will readily accept the law fixing the minimum age of marriage and people to a large extent will acquiesce in it?

A. Changing times and development of education are always taking the people more and more towards reform. I think people to a large extent will acquiesce in this legislation.

**Written Statement of Mr. ARZANALI MAZUMDAR, M.L.C.,  
Silchar.**

1. There is no dissatisfaction with the present state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. It is highly desirable to raise the Age of Consent. A girl of fourteen may not possess mature understanding to give free consent.

As regards wife the Age of Consent may not remain as it is under the Act XXIX of 1925.

3. The crimes of seduction or rape are very rare in this part of the country.

4. The amendment has not effected the opinion in raising the Age of Consent but the social opinion is in favour of raising the marriageable age. Public opinion should be stimulated.

5. The usual age is 12 to 14 for girls to attain puberty in our part of the country. This differs only in the case of girls of rich family who attain puberty before 12.

6. Cohabitation is not common before puberty among the people excepting the coolie class.

7. The practice of early consummation of marriage exists among the Hindus owing to their religious injunction.

8. The Garbhadan ceremony is generally performed among the Hindus after attainment of puberty and the consummation of marriage takes place after this ceremony. Puberty is attained before marriage among the Hindus of higher classes.

9. The attainment of puberty cannot be the sufficient indication of physical maturity, to justify consummation of marriage. The age of 16 or 17 may be considered to be enough to justify consummation without injury to health or progeny.

10. In my opinion a girl of eighteen will be competent to give intelligent consent to cohabitation.

11. Occasionally we hear cases in which rupture occurs when girls conceive before attaining full physical development.

12. Early consummation and early marriage are largely responsible for maternal and infantile mortality. They also affect the intellectual and physical progress of the people.

13. The educated classes favour the extension of the Age of Consent.

14. Yes the women in our part of the country favour early consummation of marriage.

15. The difficulty of determining the age will be reduced if the Age of Consent is raised to fifteen years.

17. Extra-marital and marital offences should be separated.

In my opinion in the case of marital offences, the punishment should remain as it is now but in the case of extra-marital offences the term of imprisonment should extend to twelve years.

20. Legislation fixing the minimum age of marriage would not be favoured by the public.

21. I prefer to rely on the progress of social reform by means of education and social propaganda to secure the object in view.



**Oral Evidence of Mr. ARZANALI MOZUMDAR, M.L.C., Silchar, Cachar.**

*(Shillong, 14th December 1928.)*

*Chairman:* Are you a member of the Legislative Council, Assam?

A. Yes.

Q. How long have you been a member?

A. Since 1927 I have been a member.

Q. To what district do you belong?

A. I belong to the district of Cachar.

Q. Can you tell us whether there are any communities in your part of the country in which early marriage is practised?

A. It prevails in some Hindu communities and in Naths and Bhattis.

Q. What is the usual age of marriage amongst them?

A. It is between 9 and 10.

Q. Have you got namasudras here?

A. Yes.

Q. What is the usual age of marriage amongst them?

A. Same as above.

Q. What is the usual age of marriage amongst the muhammadans?

A. It is between 12 and 13.

Q. What is the age of marriage amongst the lower classes of Muhammadans?

A. It is between 12 and 13, and even 14.

Q. Can you tell me what is the practice about consummation amongst the muhammadans? Is she sent immediately after marriage to her husband's house or is she sent after some time?

A. After the attainment of puberty the girl is sent to her husband's house.

Q. How long after puberty the girl is sent to her husband's house?

A. Soon after puberty she is sent.

Q. Is there any formal ruksati ceremony or other ceremony amongst the muhammadans?

A. In my part of the country there is no such ceremony.

Q. When does consummation take place amongst the namasudras?

A. After the attainment of puberty consummation takes place amongst the namasudras.

Q. You say you have come across evil results following from early marriage and early consummation. What methods do you propose to remedy these evils?

A. By means of education and social reform these evils can be remedied.

Q. Would you recommend that the minimum age of marriage might be fixed by law?

A. No.

Q. Why not?

A. Because that will interfere with our Sheriat.

Q. What does Sheriat say?

A. Sheriat does not fix the limit for marriage.

Q. Do brahmins marry their girls before and after puberty?

A. Yes.

**Q.** What is generally the age when puberty is attained among muhammadan girls?

**A.** It is between 12 and 14.

**Q.** Supposing 14 is fixed as the age of marriage, would it interfere with the discretion allowed by the Muhammadan Law?

**A.** It takes the freedom of giving a girl in marriage earlier. Sheriat permits a person to give his daughter in marriage before the attainment of puberty.

**Q.** Supposing the age of marriage is fixed at 14, then your objection is that it will interfere with that discretion. Supposing it is fixed at 12, do you think that will be acceptable to the muhammadans?

**A.** That also cannot be acceptable.

**Q.** If as you have said early consummation and early marriage lead to maternal mortality and infantile mortality very largely, don't you think that in the interests of the society and in the interest of the mother and progeny, you should take some steps for the protection of these girls?

**A.** I quite agree with you but this should not be done by legislation.

**Q.** But is there any social propaganda being carried on amongst the muhammadans to raise the age of marriage?

**A.** Of course there is no organized propaganda amongst the muhammadans.

**Q.** What hope is there that an organized propaganda would be carried on to raise the age of marriage within a short time?

**A.** In course of time it is expected that there will be an organized propaganda amongst the muhammadans for raising the age.

**Q.** What age do you recommend for consummation of marriage?

**A.** 15.

**Q.** Do you think that no consummation should be permitted before 15?

**A.** May be permitted.

**Q.** In what circumstances?

**A.** In the case of those who are healthy and well-developed.

**Q.** You say you would recommend 15 for consummation of marriage. Would you be in favour of raising the Age of Consent from 13 to 15?

**A.** Yes.

**Q.** Would you like to make these offences cognizable or non-cognizable between 12 and 15?

**A.** Non-cognizable.

**Q.** Would you like that these cases should be compounded?

**A.** Yes, but below 12 I would make it non-compoundable.

**Q.** Can you suggest any measures for bringing breaches of consent law to light?

**A.** No.

**Q.** Would you be in favour of the establishment of matrimonial courts for the trial of these marital cases consisting of a magistrate and two non-officials or would you leave the trial of these cases to the existing courts?

**A.** The trial may be in the Magistrate's Court with the aid of assessors or jurors.

**Q.** Do you think that you will be getting the right type of men to act as assessors or jurors?

**A.** Of course we can get the right type of men.

**Q.** Would it not be better if we have a matrimonial court with a magistrate and two non-officials as co-judges taking part both in the assessment of guilt and sentence?

A. One advantage of having the trial with the aid of assessors is that these people will have an opportunity of educating the public opinion and so I would prefer assessors to co-judges.

Q. But don't you know that the assessors cannot partake in the assessment of the sentence whereas the co-judges can partake both in the assessment of the guilt and sentence?

A. But I think the association of assessors will have a larger educative effect on the public.

Q. Would you recommend the system of registration of marriages?

A. Yes.

Q. Will it be helpful in the detection of crimes or breaches of this law?

A. I am not sure about it.

Q. Then why do you recommend it?

A. I say that breaches of the law will not be many but where there is a breach, this might be helpful.

Mr. Kadri: Is there any Muhammadan Anjuman or Muslim Association in your part of the country?

A. There is a muhammadan anjuman in Cachar town.

Q. Are you connected with it?

A. Yes.

Q. What is the membership of your association?

A. About 40.

Q. Was this question of marriage discussed in your association?

A. I had a formal talk with the Secretary and the Assistant Secretary of the Association.

Q. Did they call any meeting?

A. There was an informal meeting.

Q. Did you consult the members or the Secretary before drafting this reply?

A. I consulted the secretary and some of the members.

Q. May I take it that their objection for a marriage legislation is merely on religious grounds?

A. Yes.

Q. If there was no religious objection on their part, would they not mind having a marriage legislation?

A. Quite so.

Q. According to Muhammadan law, what is the object of a marriage? I understand that it is to procreate strong and healthy children fit to serve God and his creatures. Now you say that the children are weak and the young parents are not healthy and strong. Is it not so?

A. Yes.

Q. Then if we allow the young people who are not sufficiently developed to procreate strong and healthy children and who only bring into the world weaklings, do you think we are fulfilling the commands of God?

A. Of course we are not.

Q. Then if there is no direct prohibition under the Islamic law against marriage being fixed at a particular age, do you think that there is any ground for you to assert that Islamic Law will be interfered with?

A. In that case it will not be interfered with.

Q. If there is no religious objection, would you like to have a marriage law?

A. Yes.

**Q.** If so, what is the minimum age would you fix for marriage?

**A.** 14.

**Mr. Shah Nawaz:** Is it the spirit of Islam that a girl should not be married before she arrives at the age of puberty?

**A.** The spirit of Islam is that they may be given in marriage before the attainment of puberty.

**Q.** By whom they may be given in marriage?

**A.** By the guardians.

**Q.** But what is the general rule? Do you not know that generally they are married after puberty and their consent is taken?

**A.** Yes.

**Q.** Is it not a fact that the husband and the girl can enter into any contact they like?

**A.** Yes.

**Q.** You say that according to Mahommadan Law the guardians can get the girl married before puberty. Is that the general rule?

**A.** Not only the father or the grandfather can get the girl married before puberty but the other guardians also can get her married before puberty.

**Q.** Is that the general rule in this part of the country?

**A.** Yes.

**Q.** Please understand me. Is it a fact that in this part of the country in the absence of the father or the grandfather, the other guardians give the girl in marriage before she arrives at the age of puberty? Is this the general rule here?

**A.** It is not the general rule but in some cases it is so.

**Q.** You have said that fixing the age for marriage is an interference with Sheriat, but it does not say so. Sheriat does not say that you must marry your daughter before she arrives at the age of puberty. What do you say about this?

**A.** But Sheriat has given the freedom that a marriage can be celebrated before the attainment of puberty.

**Q.** But is that the general rule? Do you not know that as a general rule the girls are married after puberty?

**A.** Yes.

**Q.** Supposing we fix the minimum age for marriage at 14 and make some worthy exemptions, i.e., in some rare cases where the father being very old wants to marry his daughter to a respectable boy or some such thing, what objection the muhammadans will have to such a legislation?

**A.** If you make exemptions, I think the muhammadans will have no objection.

**Q.** Are you aware that Sheriat allows free power of legislation?

**A.** Yes.

**Q.** Supposing we find in Islam that free power of legislation is in the interests of the mussalmans, then do you think that the state can pass a legislation preventing pre-puberty marriages in the interests of the mussalmans?

**A.** They can.

**Q.** What I am driving at is this. The moment we find that such a thing is in the interests of the mussalmans, we must legislate in spite of the fact that it will interfere to a certain extent with the liberty allowed to you by Mahomedan Law. Do you agree with me?

**A.** Of course legislation is necessary but it may not be favoured by the public.

**Q.** Do you mean by public "Mullahs". What is the feeling of educated muhammadans in this part of the Country?

**A.** The educated muhammadans are in favour of fixing an age for marriage.

**Q.** What is the feeling of the educated women?

**A.** The educated women are very few but they are not in favour of it.

**Q.** What is the percentage of muhammadans who will raise objection if we fix the minimum age for marriage?

**A.** 80 per cent. of the muhammadans will be dead against such a legislation.

**Q.** You have recommended 15 as the age of consummation by legislation. It is all very well to say that the Age of Consent should be raised to 15 years but at the same time we want to make the consent law effective, so that breaches of the law can be brought to light. How are you going to make it effective?

**A.** I cannot suggest any method to make this law effective.

**Q.** I am putting to you another question. Don't you think that it will be more effective to fix the age for marriage say at 15 or 16 instead of raising the Age of Consent to 15 or 16?

**A.** Yes.

**Q.** Do you agree with me that the evil must be checkmated?

**A.** Yes.

**Q.** Are you of opinion that the State or the Government should interfere in a matter like this which is followed by evil results?

**A.** Of course the State should interfere.

**Q.** You are a Lawyer. Now will you please let us know your personal opinion about this question?

**A.** My opinion is that the minimum age for marriage should be fixed at 14 and the Age of Consent at 15.

**Q.** In your opinion do you think that there is no kuranic injunction which will interfere with the proposal we have now before us?

**A.** It will interfere with your proposal.

**Q.** It may interfere with the liberty given to the father and the grandfather but is there any Sheriat which commands you to marry your girl at a particular age?

**A.** It enjoins you to give her in marriage after the attainment of puberty.

**Q.** Where is that injunction? Can you cite any?

**A.** Of course I cannot cite any now.

**Mr. Bhargava:** Will you tell me that according to Sheriat whether there is any age fixed for consummation?

**A.** No age is fixed.

**Q.** But still you want to interfere with the liberty because you want to fix the age at 15 for consummation. In other words the consent law will interfere with the liberty in the same way as the marriage law does. Is it not so?

**A.** By 'interference with liberty' I mean interfering with the liberty of giving her in marriage before puberty.

**Q.** I am asking you that if you fix the age of 15 for consummation, will it not interfere with the liberty which is allowed by Sheriat?

**A.** I have given up the idea of the Age of Consent now because I fix the minimum age of marriage at 15. My final opinion is that the minimum age of marriage and the minimum Age of Consent should be 14.

**Q.** May I understand that you fix 14 as the age of consummation because you think it is in the interests of the girl?

A. Yes.

Mr. Mitra : In your answer to question No. 6 you say that cohabitation is not common before puberty amongst the people excepting the coolie class. Will you let me know who are these coolie classes?

A. I mean by coolie class the garden coolies.

Q. Do you think that amongst them cohabitation takes place before puberty?

A. Yes.

Q. Where do they come from?

A. They are coming from up-country.

Q. Do they follow the same custom as regards the marriage?

A. No.

Q. Is it your experience that all these people consummate the marriages before puberty?

A. There are a few people amongst them who do not do so.

Q. What constituency do you represent in the Assam Council?

A. Cachar Muhammadan constituency.

Q. Have you occasion to come into contact with these labourers?

A. I cannot say that.

Q. Do the Hindus have early marriage and early consummation in these parts?

A. No.

Q. So in fact you think that there is no necessity for having a consent law for Assamese people because there is no early consummation practised here. Is this your opinion?

A. Early consummation may not be in general but there may be a few cases.

Q. But in any case, do you think that if the marriage law is passed fixing the minimum age of marriage at 14, that will be acceptable to the people?

A. Yes.

Dr. Beadon : In paragraph 2 you say that a girl of fourteen may not possess mature understanding to give free consent. I don't quite understand this sentence. What do you mean by this?

A. I mean by this that the girl will not be physically fit even for cohabitation, at the age of 14.

## Oral Evidence of Mr. N. C. BARDOLAI, M.L.C.

(Shillong, 14th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presiding.)

Mr. Kanhaiya Lal : Are you a member of the Legislative Council, Assam?

A. Yes.

Q. How long have you been member of the council?

A. For the last 2 years.

Q. Have you been connected with any social reform or any public movement in the country?

A. I am not connected with social reform but I am intimately connected with all the national movements in the country.

Q. Do you represent the Swarajya party in the council?

A. Yes.

Q. Have you been connected with municipal administration?

A. I am also a member of the municipal committee at Gauhati.

Q. Can you tell us whether there are any communities in this part of the country where early marriage prevails?

A. Yes. There is only one community in Assam which has early marriages and that is the Brahman community.

Q. What is the usual age of marriage among them?

A. Between 11 and 13 that is to say a girl must be married before puberty.

Q. Is there any other community where this practice prevails.

A. There are a few families of Kayasths; the generality of Kayasths do not have early marriages.

Q. What is the usual age of marriage among the Kayasths?

A. Barring those few families in all communities in Assam girls are married after 16 or at least not earlier than 15.

Q. You yourself belong to the Brahman community?

A. Yes.

Q. What is the usual age of consummation among the Brahmans?

A. Among the Brahmans the girl must be married before she attains puberty. There is the real marriage ceremony which is called *agbia* which is before puberty. Then after that when the girl attains puberty another marriage takes place without the husband; some ceremony is performed and that is called *pas bia*. Then sometime elapses,—one or two years,—there is *shanti bia*. After the *shanti* ceremony, the bride is taken away by the bridegroom to his house. All this time the girl remains with her parents. After the marriage and before she attains puberty the husbands may see the girl but the custom is that as soon as she attains puberty and before *shanti* marriage is performed, if the husband sees his wife, he is supposed to lose some years of his life. The girl is not allowed to see the husband and she is not allowed to cook things in the household till the *shanti* marriage is performed. This two years time between the *pas bia* and *shanti bia* are utilised by the parents in teaching her weaving. In this part however the family may be high, unless the girl knows weaving, she is not considered educated. A girl is taught weaving so that when she goes to the house of the bridegroom she may not be looked down by the other members of the family. Generally after puberty *shanti bia* takes place and 2 years after the *shanti* ceremony the girl is taken away by the bridegroom and from that time consummation takes place. Generally speaking consummation rarely takes place before 14 or 15. For example a man is alone and has children to look after; in that case the girl goes early. That is about the Brahmans.

Q. It means practically there is no early consummation?

A. There may be early marriage but she must attain puberty before the husband can take her away.

Q. What about other communities?

A. The other communities are Sudra community, Kayasths, Kalitas, Konchus. There are two classes of Kayasths. There are very few families in one class who marry their girls just like Brahmans and the other Kayasth community is in Assam proper who marry their girls after 16 or 17. Now most of them are sending their girls to Calcutta for higher education.

Q. What about the other communities—is there any *shanti* ceremony among them?

A. In their case there is no *shanti*, etc. Their girls are married at an advanced age of 15 or 16.

Q. Do you know when the Muhammadans marry?

A. I know the Assam Muhammadans. They marry their girls at an advanced age and always after puberty.

**Q.** Have you come across any instances where evil results followed early consummation or early maternity to the mother or to the child?

**A.** I have not come across any such cases. In fact I have not seen any case of early consummation.

**Q.** Do you think there is any need here for legislation to protect girls from early consummation?

**A.** I do not think there is any necessity for legislation so far as Assam Valley is concerned. If you want my personal opinion I would have marriage and consummation of marriage after 16.

**Q.** But will it be accepted?

**A.** So far as Assam Brahmans are concerned if you pass a law they will disobey it.

**Q.** What would you recommend as minimum age for marriage?

**A.** So far as Brahmans are concerned there can be no age limit; they must perform marriage before puberty.

**Q.** You cannot therefore make it higher than 12?

**A.** Even among these Brahmans opinion is advancing very much. At least the educated people are trying their level best to give their girls in marriage much after puberty but the difficulty is that the orthodox section is dragging them down.

**Q.** If the proposal now made by Mr. Sarda's Bill namely that the minimum age of marriage should be 14, is passed, do you think people will generally follow it and respect it?

**A.** Knowing the temper of the people here as I do I think there will be every opposition if the Government passed a law. Any law passed by the Government will be opposed because people have no faith.

**Q.** If the Assembly passes it?

**A.** Our people have not got any faith in the Assembly or Government.

**Q.** Would you recommend 12 as the minimum age of marriage if any age is fixed?

**A.** Yes, if you pass any law, but consummation should not take place before 14 or 15. If that is done there would be no opposition from Assam.

**Q.** What age would you recommend for consummation?

**A.** 15.

**Q.** Would you like the existing system to remain in force namely that cases before 12 should be cognisable and after 12 they should be non-cognisable?

**A.** I do not believe these laws will be effective except in extra-marital cases because nobody goes to complain.

**Q.** We get some cases brought to light in the whole of India every year?

**A.** If you legislate I do not think it will be effective in marital cases because it would be suppressed by everybody.

**Q.** If you make the cases cognisable then is there no chance of detection?

**A.** But then there would be so much oppression.

**Q.** Would you like these marital cases to be investigated by higher officers of the Police like the Inspector of Police or the Deputy Superintendent of Police?

**A.** We have so little faith in the police so I would not recommend it at all.

**Q.** Then would you keep the law as it is—cognisable below 12 and non-cognisable above 12?

**A.** Yes.

**Q.** Do you think vigilance societies would be useful in bringing cases to light both in cities and rural areas?



A. If you can have intelligent vigilance societies in rural areas, but I do not think there will be intelligent vigilance societies available. In towns the public opinion is so strong that you do not require vigilance societies.

Q. Would you like these marital cases to be tried by ordinary courts as hitherto or would you like matrimonial courts established for the purpose?

A. If there be courts at all I should rather see these special matrimonial courts established.

Q. Would you like to associate 2 non-officials with the judge as assessors, jurors or co-judges?

A. Yes, I would like them as co-judges.

Q. Do you think respectable men will be available to co-operate?

A. Yes.

Q. Another proposal has been made before us that in order to make the law effective we should have a system of registration of marriages giving the names of the marrying parties and their ages?

A. Yes, I would recommend that.

Q. Who should be the registering authority?

A. Even now in Assam municipalities there are certain persons with whom births and deaths must be registered. In villages village headman keeps the register.

Q. Would you give the registration of marriages to the same authority who keeps the registers of births and deaths?

A. Yes.

Q. Would you further recommend that in cases of birth, a birth certificate should be granted to the individual who comes to report the birth so that he may keep it with himself?

A. There is no harm in giving a certificate, but I find in practice that the village headman keeps the register and whenever it is necessary you can call for the register and see it at once.

Q. Do you think it will be workable?

A. If the man loses it probably he will be in great difficulty with the village registrar; he shall have to bribe him to get a copy. Our people keep valuable papers in small bamboos.

Q. But even now if a man wants to get a copy he has the same hardship?

A. We do not get copies. We apply to the court and the court calls for the whole book.

Q. Is it practicable or not?

A. It will be practicable.

Q. Would you further recommend that in case of registration of marriages, a marriage certificate should be issued to the marrying parties for record?

A. If the marriage is registered a free certificate should be given.

Q. Would you make these marital offences compoundable?

A. I would always make the marital cases compoundable.

Q. Should it be made compoundable whether the age of the girls is below 12 or above 12?

A. In my part consummation does not take place below 12 so that does not apply to us. I would make it compoundable irrespective of age.

Q. Would you make the cases compoundable with the sanction of the court?

A. Yes.

Q. What age do you recommend for extra-marital cases?

A. I would rather recommend 16.

**Dr. Beadon :** You say in your statement that girls are not married until 16, 18 or even 20. Do you hear of many cases in which girls go wrong if they are kept unmarried up to this late age?

**A.** I do not know of any case at all.

**Q.** We have been told that if the marriage age is raised there will be danger to the morality of the girl. What is your opinion?

**A.** I do not support that at all.

**Mrs. Nehru :** Can you tell us anything about the marriage customs of the cultivating classes?

**A.** In Assam Valley the difference between the cultivating classes and the so-called *bhadralok* class is very little. The Assam peasants are very peculiar; they belong to a high social class of people because the Assam peasant class is not confined to any special caste. A Kalita may be a peasant or he may not be. If he is well educated he belongs to the *bhadralok* class.

**Q.** What are the marriage customs of the Khasis?

**A.** Khasis are hill people and as far as I know they are admirable in their marriage customs. A girl chooses her own husband. They marry when they have sufficient power of understanding. As far as I know if the husband goes wrong the wives do away with the husband.

**Q.** Other cultivating classes also marry late?

**A.** Yes.

**Q.** Are these Brahman cultivators here?

**A.** They are cultivators in the sense that they have lands but they get it ploughed by others. There are social restrictions against ploughing.

**Q.** Generally the age of marriage of the girls are determined by the caste?

**A.** Yes. I was rather amused to hear one gentleman speaking of the system of seducing away girls; that gentleman does not know much about it. The custom in Upper Assam is that there are some classes—good and respectable people who dance in April on the Bengali new year's day. They are unmarried girls and youngmen also join in the dance. Before that dance grown up girls of 18, 19 and youngmen fall in love but on account of the oppression of the parents or villagers they cannot marry. At that time the girl and young man conspire and after that they elope. After three or four days the father goes to court and files a complaint that my minor girl has been taken away; summon is issued and the girl is brought to court. But generally the girl and the boy go straight to court and say before the court that they are above 18 and that they want to marry and the girl says that I may be allowed to go with my lover. They are given permission and in that case they go back again to the village and then there a sort of compromise and marriage is performed.

**Q.** All that you are speaking is on behalf of the whole of Assam?

**A.** I am speaking on behalf of Assam proper, i.e., the Assam Valley.

**Q.** Do the boys' fathers ask for dowry in all communities?

**A.** No, presents are made to the bridegroom by well-to-do people.

**Q.** Among the Brahmans the question of pre-puberty marriages is still as strong as before?

**A.** Yes, in the villages it is as strong as before, but in *bhadraloks* it is not so strong as it was before.

**Q.** Do some ex-communications take place on account of late marriages?

**A.** I heard of one case year-before-last in a village called Janji because the girl attained puberty before marriage, but since then I have not heard anything. The desire among the ladies as well as gentlemen of Brahman classes of little advanced views is very strong that girls should be married after puberty.

**Q.** Some marriages must be taking place after puberty?

**A.** There are but the people are not informed.

**Q.** So far has no deliberate case of post-puberty marriage been declared?

**A.** No.

**Q.** What is the condition of the widows here? Do they suffer any restrictions?

**A.** They do suffer many restrictions and the condition of widows especially in Kamrup District is really deplorable. In some cases I find that if a girl widow goes wrong she is turned out of the house and she has no shelter. Some people drag her away and give her protection. Previously it was very bad but now it is less. Now a Boria community has sprung up who take away the girl. The mother is Brahman and the father is low class man; they are called Borias. Among the Shudras and other classes that difficulty does not exist because in Assam there is a sort of custom of widow remarriage. Except among the Brahmans, widow remarriage is allowed.

**Q.** Do you think there will be a great deal of opposition if this Bill is passed on political reasons?

**A.** I do not think there will be any opposition on political reasons but if the marriage is fixed at 14 or 15 then there will be opposition from the Brahmans but they would not object to consummation taking place after puberty.

**Q.** Are Brahmans as orthodox as in other parts—do they object to crossing the seas?

**A.** Yes, but now they do not object to crossing the sea.

**Q.** Then they should not object to post puberty marriage.

**A.** In course of time they may not but now there will be opposition if the age is fixed at 14 because there will be suspicion in their minds against the Government.

**Mr. Mudaliyar:** You represented Assam before the Joint Parliamentary Committee?

**A.** Yes.

**Q.** Supposing the Legislative Assembly passes this measure fixing the age of marriage by legislation and leaving aside the Government all parties combine together, how can there be any question of suspecting the legislation?

**A.** There is the difficulty so far as this part is concerned that people follow the Gosains. The Assamese are disciples of Gosains. In social matters and religious matters there are orthodox people who would not care for our opinion but in political matters we can lead them anywhere.

**Q.** If all the political parties join together and get through the bill, no political party can raise an objection against it. Is it not so?

**A.** I do not say there will be agitation on political grounds but there will be lot of ex-communications by the Gosains and there will be lot of social troubles.

**Q.** Don't you think that this sort of law will strengthen the hands of those who want to marry late?

**A.** It will weaken our political position.

**Q.** What is the population of Brahmans in this Province?

**A.** The total population of Assam is about 80 lakhs, the population of Assam Valley is 70 lakhs and I think the Brahman population is about 1½ lakhs. But Brahmans are the most powerful community.

**Q.** Do you think the example of the Brahmans is being by other classes?

A. They copied some time ago but now there is a check. Other classes are seriously thinking of getting their girls educated. Every year a lot of our girls are going to Calcutta for higher education.

Q. Since when has there been a check?

A. Since 10 or 11 years and now it is in full swing.

Q. Are Assamese Brahmans all Assamese; are there not Bengalese?

A. Bengalis follow Raghunandan and we follow Puranas.

Q. In marriage and inheritance what do you follow?

A. Before we used to follow Mitakshara but since the Bengali lawyers came in Assam we are now following Dayabhaga Law.

Mr. Mitra : Assam Brahmans follow pre-puberty marriages, is it due to custom or is it according to any text of Shastras?

A. They always quote the text of Shastras according to which every girl must be married before 8.

Q. If the Brahmans care for the Shastras it means they follow the Shastras.

A. I do not think Brahmans follow the Shastras at all.

Q. Then is it merely a custom?

A. In that sense it is a custom.

Q. And there is a community among the educated people who are anxious to get beyond this custom?

A. Yes.

Q. Don't you think that if a law is passed however forcefully they may protest against, the educated people will take it as desirable?

A. Educated people are so few.

Q. But orthodox people also do not marry before puberty?

A. They preach that marriage should be before puberty.

Q. But real consummation never takes place before puberty?

A. No but if they marry after they will lose their caste.

Q. But Shastras say that marriage must be consummated immediately after puberty.

A. At the Diragaman ceremony the bride is taken to the husband's house but she is brought back after an hour.

Q. What do you think if the age of marriage is fixed at 13?

A. If you fix it at 13 not much harm will be done but those girls who are well developed will be married earlier and the parents will say that she is 13. There will be some opposition but it will encourage people to conceal the age of the girl.

Q. At present there are cases where marriages take place at 6 or 7 and consummation immediately after 10th or 11th year will those cases be checked?

A. I am strongly of opinion that in matters of consummation there ought to be a strong law and it should be strictly enforced.

Q. In the whole of India about 6 cases are brought to light but there are hundreds of cases occurring. Can you suggest anything by which we could bring these hard cases to court?

A. I cannot suggest anything. So long as courts do not inspire confidence and so long as Government does not inspire confidence there is no use of passing any legislation.

Q. Don't you think if there is marriage law it will be effective?

A. Even if you have a marriage law unless you get the co-operation of the people you cannot make it operative.

**Q.** We can make the marriage law operative if we have strict birth registers and then we can know the age of the girl; marriage is a public thing.

**A.** But you must have somebody to complain.

**Q.** In marriage law it is not necessary.

**A.** But who will inform the magistrate.

**Q.** It will be binding on those people who celebrate the marriage to consult the birth register.

**A.** In that case it will be impracticable. Birth registers are kept by the village headmen in the villages and they are not intelligent enough to keep them properly and he may be bribed.

**Q.** But is there harm in having such a law?

**A.** No. In Assam of course there will not be much opposition.

**Q.** As regards extra-marital cases why do you fix the age at 16 and not at 18 which is the age of discretion?

**A.** I do not mind it because the higher you fix the age the better it will be for society.

*Mr. Bhargava:* You have said that in Upper Assam a boy and a girl go away on account of the oppression of the villagers. In cases like that don't you think that the law should lay down some sort of compromise or compounding?

**A.** Yes if they below age but generally they are not below age.

**Q.** My point is that if the boy and the girl want to marry or parents of the boy and girl want to marry in that case compounding may be allowed in extra-marital cases because it is not immoral.

**A.** Yes.

**Q.** When law creates an offence it is the duty of the law to prevent it also. As at present as you know there are sections in the Criminal Procedure Code which deal with prevention of offences. Would you like that as soon as it is known to the magistrate that a girl below the prescribed age is living with husband he may call upon the husband or the parents of the girl and boy to execute a bond that consummation will not take place?

**A.** That is possible if it is known to the magistrate from reliable sources that they are living together.

**Q.** If a girl is living with her husband cannot the law make a presumption in such cases that cohabitation is going on?

**A.** The law may make a presumption but it does not necessarily follow that cohabitation is going on.

**Q.** If you do not like this procedure then in order to stop the offence security should be taken from the parents of the boy and the girl. What is the procedure that you would recommend for preventing early consummation after marriage?

**A.** I do not see any other way except that you legislate for it.

**Q.** Barring Assam there are other places where certain communities say that marriage should be consummated soon after puberty and you say that you want to prevent it. If the feelings of those persons are wounded thereby would you not mind that?

**A.** No.

**Q.** Supposing that after marriage it is almost impossible to prevent consummation of marriage, would you then recommend that marriage law may be passed though it may go against the Assamese Brahmans?

**A.** No, I would say there should be no marriage below 13.

**Q.** Supposing marriageable age is fixed at 14?

**A.** That will create trouble in my part.

**Q.** It will create trouble in your part to a certain extent but if we do not make a law it will create trouble in the whole of India.

**A.** I think it will be equally effective if you make a law that consummation should not be allowed before 14.

**Q.** Unless consummation is prevented below 16 it is no use having a law because if a girl becomes a mother at 14 or 15 even then there will be injury.

**A.** I said 15. If the girl goes to her husband at that age there is no harm.

**Q.** I want that the marriage law may be fixed at 14?

**A.** I say it ought to be 13.

**Q.** Your reason is that the feelings of Assamese people will be injured.

**A.** Not only Assamese but the feelings of all orthodox communities in India will be injured.

**Q.** Feelings will be equally injured if you pass a law at 13 or 14?

**A.** At 13 feelings would not be injured much because girls generally attain puberty after 13 and they want to have pre-puberty marriages.

**Q.** In Madras puberty is attained between 11 and 13 and if the marriage age is fixed at 13 the agitation will be equally strong.

**A.** It will be less because in our parts puberty is attained between 13 and 14.

**Q.** There are families whose girls attain puberty at 12 and there are families whose girls attain puberty at 15. Those whose girls attain puberty between 13 and 14 would not oppose but those whose girls attain puberty at 12 will kick a row. But in a matter of national importance you would not care for that row?

**A.** I would not care so far as consummation is concerned.

**Q.** But you cannot prevent consummation unless you prevent marriage?

**A.** The same law which will prevent marriage will also prevent consummation. I think people will rather submit to the postponement of consummation by law rather to the postponement of marriage. I have consulted a lot of ladies in this connection and all the ladies say with one voice that they would prefer that consummation is postponed but not marriage.

**Q.** If there is a consent law and there is a marriage law, where would you give the right of complaint. Would you retain it as it is?

**A.** Yes.

**Q.** You think that fine would be better in case of breach of marriage law if there is a marriage law?

**A.** Yes.

**Q.** Don't you think that if there is a marriage law the offender may be given some imprisonment because fine alone would be considered a part of marriage expenses and would be paid?

**A.** I do not advocate imprisonment at all. I would impose fine only.

**Q.** You advocate the registration of marriages?

**A.** Yes.

**Q.** You say that birth registers are fairly accurate?

**A.** They are considered accurate because no importance is given to them.

**Q.** You say that it is only 3 or 4 per cent. cases which are not reported. Probably it is less in villages because the village headman himself records it. For marriage register also it will be the duty of the village headman to keep this register and there will be no obligation on the persons marrying or their parents to report the matter.

**A.** There need not be any obligation because the village headman will do it himself.

*Q.* It will so happen that the village headman may put the wrong age.

*A.* He may.

*Q.* Then the parents will give the age that will suit their purpose so that there will be conflict between the 2 entries one in the birth register and the other in the marriage register. Supposing one man has got 2 girls one after the other. Generally birth registers do not give the names and supposing the first girl is dead and he wants to get her married. In order to give her age higher he will refer her as the first child and will give a higher age.

*A.* Generally marriage register will be a safeguard.

*Q.* If you place the obligation on the parent he will be the accused person and you cannot expect the accused person to make a confession.

*A.* No but why do you suppose that every father will be a blaggard.

*Q.* Do you think without the auxiliary of the provision for registration of marriages marriage legislation would be helpless?

*A.* Yes.

*Mr. Shah Nawaz:* You say that in Assam Brahmins desire to postpone consummation till a girl is 15. But in the South the feeling of the Brahmin is that the marriage must be consummated soon after puberty. Now how are you going to prevent consummation between 13 and 16?

*A.* I think if you legislate it is possible.

*Q.* But how is legislation by itself going to prevent consummation?

*A.* All I can say is that I will support you in this legislation. But unless you have public opinion behind you there is no chance of the law being effective.

*Q.* As a matter of fact the feeling of the Brahmins in the South is that girls should be consummated soon after puberty. Having regard to the nature of the boys and girls, supposing they are brought together, how are you going to prevent consummation and make the law effective?

*A.* Is there any bar in the South to girls marrying after puberty?

*Q.* Amongst the Brahmins in the South there is. They say that marriages should be consummated before puberty. So far as you are concerned the law will be in accordance with your feelings. But in the South the law will be contrary to the feelings of the Brahmins. You say that marriage should not be consummated before 15 or 16. How then are you going to prevent consummation before 15 or 16?

*A.* I cannot think of any other way except that you should pass the law and try your chance. You will have to pass the law and create public opinion. The law will be a dead letter, but it cannot be helped.

*Q.* Then we will be where we were.

*A.* I do not think there is any use in these laws. It is only an academic discussion we are having over it.

*Q.* There are a class of Brahmins in the South who are called Nambudri Brahmins who are orthodox Brahmins, but they have post-puberty marriages.

*A.* Then leave it to be done by others in the same way and probably it will be followed very soon in the whole of India.

*Q.* Why are you afraid of 4 or 5 years?

*A.* If you enforce the legislation now it will be opposed. The villagers on account of the bad treatment they are now receiving at the hands of Government will oppose everything that the Government brings in. They suspect everything that the Government does. They do not make any distinction between the Assembly and the Government because they have in mind the recent instance here when the Council could not help them in any way when the land revenue was raised from 30 to 40 per cent.

*Q.* Do you think social propaganda will be effective?

A. Yes.

Q. What will be the nature of the propaganda?

A. It is going on even now. We are preaching about the removal of untouchability, the education of girls, the evils of child marriage, especially amongst the Brahmins. The result of this propaganda is that even orthodox people are coming round.

Mr. Kadri: Was there any conference at which this question was discussed?

A. Many conferences were held in many places.

Q. What was the opinion of the conferences?

A. The opinions are always for an advance. In Assam there are four Goswamis who are the religious heads of the people. One of them has been preaching all this, and his preachings will do more than any legislation. He is doing it even now and carrying on propaganda regarding social uplift. So far as our help is concerned you can count on it any day. But if you want to be practical you must proceed rather cautiously.

### Oral Evidence of Mr. MUHAMMAD ABDULLAH, B.L., Sylhet.

(Shillong, 14th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you a member of the legal profession?

A. Yes; I have been practising in the Sylhet district for 8 years.

Q. What is the usual age of marriage amongst Muhammadans in your part of the country?

A. Amongst higher classes of Muhammadans it is not less than 15 years; even in the poorer classes it is generally from 14 to 18.

Q. Amongst Muhammadans are there marriages before puberty?

A. No.

Q. Are there early marriages amongst the Hindu community?

A. Formerly Hindu girls were married early. But now owing to the spread of education the marriageable age has gone up.

Q. What is the usual age of marriage amongst Hindus?

A. 13 to 18.

Q. In any part of the Sylhet district are marriages before 13 practised?

A. They are exceptions.

Q. What are the exceptions?

A. They are found in a few cases, but they are not confined to any particular community.

Q. Are you in favour of fixing a minimum age for marriage?

A. I am against legislation fixing the age of marriage.

Q. Why?

A. My point is that education and social propaganda will have the desired effect, and we are having them even now. I think if you fix this age limit it will increase litigation:

Q: Is social propaganda being carried on now?

A. Yes; it is being carried amongst Muhammadans.

Q. Who is carrying on the propaganda?

A. There are social organisations like the Sylhet Social Service League.



**Q.** What is the object of the League?

**A.** Social service.

**Q.** How many members are there in the League?

**A.** I do not know the exact number, but I think there are about 30.

**Q.** Is there any other organisation?

**A.** There is no other recognised organisation, but enlightened people do propaganda work in the country.

**Q.** Do you think that children born to older mothers are healthier than children born to younger mothers?

**A.** I have not found any difference.

**Q.** What is the usual age of first maternity amongst people here?

**A.** 15 to 16.

**Q.** Do you think that the law of the Age of Consent is observed in this part of the country?

**A.** Amongst Muhammadans there is no consummation before 13. But amongst the Hindus there may be some cases, but I am not intimately connected with the Hindu community.

**Q.** Supposing we find that there are cases where consummation has taken place before 13 when the girl is not well developed, would you recommend that the age of consummation should be raised in order to protect the girl? What would you have as interval between puberty and consummation?

**A.** I would have consummation six months after puberty.

**Q.** Do you think that girls will be well protected if the interval is six months after puberty?

**A.** The doctor friends I have met tell me so.

**Q.** If concrete cases have been brought to your notice saying that injury has been suffered by the girls and their progeny where maternity has taken place at 13, 14 or 15, would you recommend an advance in the age?

**A.** I have not come across any such cases. I have not heard of cases where there has been consummation before such an age.

**Q.** Do you think that an advance would be justified or not?

**A.** If what you say is a general practice I would then recommend the raising of the age.

**Q.** Robbery is not a general practice and yet we have got a law for it. There have been cases in which girls have suffered injury at 13, 14 or 15.

**A.** If there have been one or two cases of that kind I would not ask for a law. I would depend upon social propaganda to remedy the evil.

**Q.** If there are such cases requiring protection, would you then recommend legislation?

**A.** I do not find such things are common in my part of the country. Therefore I cannot recommend the step.

**Dr. Beadon :** I have been told by the Civil Surgeon in Dacca that it is common for girls of 11 and 12 to have babies, and that there have been dreadful injuries in many cases. Would you therefore be in favour of legislation?

**A.** If there are numerous cases as would endanger the whole community I would recommend legislation.

**Q.** Do you not think that the case of 50 or 100 girls is enough for the purposes of legislation? Do you not think that the community should do something to protect them?

**A.** In that case I would propose social propaganda.

**Mrs. Nehru :** What are your grounds for your being against legislation?

**A.** Firstly if this law comes into force litigation will increase. Secondly the law will not be effective until and unless the mind of the people is

changed. The third reason is that so far as I can see social propaganda is bringing about the desired result.

**Q.** Do you think that on account of the existence of the present law there have been litigation cases?

**A.** Girls in my part of the country have not been married before 13; therefore there has not been any litigation.

**Q.** Do you mean to say that in Assam in no community does consummation take place before 13?

**A.** I am talking of my district Sylhet, and I can say that in no community does consummation take place before 13.

**Q.** India is a thousand times bigger than Sylhet. This law has been in existence for a long time and we have not heard of litigation on account of this law. Even if the age is raised and a few more cases arise, there is no reason why litigation should increase.

**A.** About other parts of India I cannot say what will be the effect of the law.

**Q.** What is the general age of consummation in Sylhet?

**A.** Amongst Muhammadans it is just after marriage that is about 15.

**Q.** You say that the present age of consummation in your part of the country is 15 or 16. If the Age of Consent is raised it will exactly be the same as it is already the practice here, and there will be no untoward result. Is it not?

**A.** There may be cases when a girl might have been fully developed at 15; in such cases the law will prevent the parents of the girl from marrying her.

**Q.** Do you think then that the Age of Consent can be fixed at 15?

**A.** I have personally no objection. But as I have said I object to legislation on social matters.

**Q.** We are discussing the reasons on which you base your objections. The first is litigation will increase. That objection is now gone, because if the age is raised to 15 it will coincide with the practice existing already.

**A.** My fear is that even if a girl is 16 and she is married, there will be persons coming in and saying that she is below the age fixed.

**Q.** But such cases can come in even now when the age is 13. There will always be one or two such cases.

**A.** Even at present there have been false cases.

**Q.** Can you give us details of one or two cases?

**A.** In my district there was a girl who was a major and on her own consent she married a person. The mother wanted that the girl should earn money by immoral means. The girl resented the suggestion, and got herself married to the person. The mother of the girl thereupon sued the girl and her husband said that the girl was a minor. But on medical examination it was found that the girl was more than 16 and the case failed.

**Q.** But that does not come under the category of false cases under the Age of Consent law. However, are you against this legislation on religious grounds?

**A.** No; Muhammadans do not consider this law to be against their religion.

**Mr. Mudaliyar:** Are you the General Secretary of the Khilafat Association here?

**A.** I was the Secretary of the Provincial Khilafat Committee; I am now the Secretary of the Assam Provincial Muslim League.

**Q.** Has your League been affiliated to either of the Leagues led by Mr. Jinnah or Sir Muhammad Shafi?

**A.** We have not got ourselves affiliated with any of the Leagues.

Q. May I take it that your answers represent the opinion of the League?

A. I have not consulted the members of the League, and therefore I cannot say that.

Q. Have you reason to think that your League will differ from your views?

A. I cannot say that until I have asked them.

Q. Do you not think that this legislation will make a new custom?

A. I have not seen the custom of early marriages, and therefore I cannot say what the result of this legislation will be in changing custom.

Q. Are you aware that at one time there were early marriages at 11 and 12 and that is why legislation was undertaken?

A. Amongst the Hindu community there might have been early marriages, but amongst the Muhammadan community I have not seen such a custom.

Q. In many parts of India the Muhammadans are as much followers as the Hindus of this custom. If that is so would you have legislation? Do you think that it is a custom which ought to be discouraged?

A. Yes.

Q. May I take it that you will do it by every means possible short of immoral and illegitimate means? Do you consider social legislation, by which healthy customs are sought to be brought in and unhealthy customs eradicated, immoral?

A. Legislation cannot by itself confer happiness on the people and change their mentality.

Q. Do you not think that it is one of the many half truths in politics. Do you not think that the present legislation of 1919 about the reforms has considerably changed the mentality of the people?

A. I do not think so.

Q. Do you think that the mentality of the people is the same now as it was before 1919?

A. Yes; it is the same.

Q. Supposing you go all over India and find that amongst a larger section of the Muhammadans early marriage is prevalent, would you then advocate a change in the system?

A. Yes.

Q. Would you then have social legislation in the form of a law fixing the age of marriage?

A. At present the law of the Age of Consent is 13. I do not want to make any further amendments. I prefer social propaganda for bringing about an advance in that direction.

Q. Are you satisfied that the pace of social propaganda at present is good?

A. I think if there be regular propaganda it would be effective.

Q. What is the work which your social service league has done in this behalf?

A. They are giving lantern lectures as to how to nurse children, how to keep houses clean and subjects of that kind.

Q. Has the League attacked any prevailing social customs and tried to change them?

A. I can say that during the last non-co-operation movement a great many things have been done in the course of two years; for instance we had interlining in those days.

Q. But after that you went back to caste dinners. Is it not a fact that you became more orthodox after the non-co-operation movement?

Q. Before that I would not take anything from the hands of a Hindu; but on the very first day of the movement I took several things at the hands

of a Hindu friend. Even now the Muhammadans do not object to taking things at the hands of Hindus, but the Hindus object to taking things from Muhammadans.

*Q.* Do you think then that any advance can be made by that sort of propaganda? How many years do you think it will take before interdin- ing becomes common amongst all classes?

*A.* If there be such another movement under the leadership of that great man (Mr. Gandhi) I think in the course of another 5 years there will be interdin- ing in the whole of India.

*Q.* How many years do you think it will take to bring about this reform of consummation after 15?

*A.* It can be brought about in 4 or 5 years or in less time.

*Mr. Mitra :* What is the population of the Sylhet district?

*A.* About 26 lakhs.

*Q.* What is the percentage of Muhammadan population?

*A.* About 55 per cent.

*Q.* May I take it that you come into intimate touch with the whole of the Muhammadan population?

*A.* Yes.

*Q.* Do you think that there is no need for such a legislation so far as Sylhet is concerned?

*A.* Yes.

*Q.* So that so far as Sylhet is concerned, because there are no cases of early marriage or early consummation you say you will not be affected either way.

*A.* Yes; we will not be affected.

*Q.* If a law is passed fixing the age of marriage or raising the Age of Consent may I take it that they will be apathetic because it does not concern them?

*A.* There will be no opposition from the Muhammadans, but I do not know about what the orthodox Brahmins will do.

*Q.* What is the population of Muhammadans in the rest of Assam?

*A.* It is about 20 lakhs of which Sylhet has more than 13 lakhs.

*Q.* May I take it that there will be no objection from a religious stand- point either to the marriage law or the Age of Consent law?

*A.* No.

*Mr. Bhargava :* Is your Social Service League doing any propaganda work?

*A.* Yes; I have myself delivered lectures to females about cleanliness and the nursing of children.

*Q.* In that League, has there been propaganda about the prohibition of early marriages?

*A.* There has been no need for that sort of propaganda because there is no such practise amongst Muhammadans.

*Q.* You have given us three reasons why the law is not necessary in Sylhet, namely, there will be litigation; the law will be ineffective, and thirdly the social service League is already doing such work. So far as the second reason is concerned, may I take it that the law need not be effective at all because it will not affect you?

*A.* The law will be ineffective in cases where the parties consent and nobody goes to court.

*Q.* Do you mean to say that cases will not go to court unless the wife complains?

*A.* Unless the wife or the wife's relations complain.

**Q.** Is your objection then on the ground that the law is ineffective and that you want an effective law?

**A.** There are other reasons also for my objection.

**Q.** Is that a correct statement of your position or not?

**A.** All my three reasons go together.

**Q.** You say that there is social propaganda in your part of the country. If I say that in the rest of India there is no social organisation which is doing effective work in this behalf, will you agree that it will be a thousand years before social propaganda can be organised and made effective?

**A.** I admit that if there is no such propaganda it will take a long time for the reform to be introduced.

**Q.** If there be no such propaganda will you agree that there should be social legislation?

**A.** In that case yes.

**Q.** So far as litigation is concerned, have you come across any instances where the law is abused?

**A.** My point is that increase of the age might increase litigation. At present no girl is married before 13 and therefore there is no litigation.

**Q.** You have yourself said that in the lower classes of Muhammadans consummation takes place between 14 and 18, and you admit that it should not take place before 15. So even according to your own admission there will be some cases which require a remedy.

**A.** Yes; there are some cases.

**Q.** May I take it that a fair number of girls are married at 14 also?

**A.** Yes; if there is bodily development.

**Q.** Supposing it is required for the rest of the country will you be for legislation fixing the age of consummation at 15?

**A.** Yes.

**Q.** May I know if you are opposed to marriage legislation or not?

**A.** I am opposed to marriage legislation.

**Q.** On what grounds?

**A.** It will be trenching on the personal law of the Hindus and Mussalmans as it is prevalent amongst them.

**Q.** Is it not the same with regard to consummation also?

**A.** As far as consummation is concerned, there is no bar in the Muslim religion. As for marriage, it will be an infringement of the right they have got at present to marry their daughters at any time.

**Q.** At present Hindus and Muhammadans' consummate marriages of girls after 13. If you raise the age of consummation to 15 Hindus and Muslims will not be allowed that liberty; so that the case of marriage legislation and consent legislation is the same. Is it not?

**A.** There is some difference between the two. As regards consummation it affects the physical good of the parties. But as regards marriage there are a thousand other considerations. For instance a man may be on his death bed, and he might want to marry his girl to a suitable husband.

**Q.** Supposing exemptions are provided in hard cases, will you then agree to legislation.

**A.** I think it will be difficult to cover all hard cases, but if that can be done I have no objection to legislation.

**Mr. Shah Nawaz:** You say that you will bring about the desired result by means of social propaganda. Are you in favour of female education amongst Muslims? Do you want to make it compulsory by means of social propaganda or by legislation?

A. There is no compulsory education even amongst the males at present.

Q. If you are for compulsory education do you not think it is no use depending upon social propaganda? People will not listen to you. Why then do you not advocate legislation?

A. If you can have compulsory education for females, then I think marriage legislation will not be necessary.

Q. Do you think that legislation as regards compulsory education will be effective?

A. Legislation with regard to compulsory female education will, in my opinion, do away with marriage legislation.

Q. Do you not think that if girls are married early it retards their education?

A. Yes; if they are married at 12 or 13.

Q. What do you mean by saying that legislation raising the Age of Consent will increase litigation. How will it increase litigation and false cases more than in cases of seduction and adultery?

A. Supposing there are two candidates to the hand of a girl, and the girl married one of them, there will be dispute about the age and the doctor will have to examine the girl. That is why I say there will be litigation.

Q. That will only be dispute about the age. Supposing we make it effective by registering the time of marriage, i.e., at the time of marriage the Nikahan puts down the age of the girl, and we make it impossible for there being any dispute about the age by means of some documentary evidence, how can litigation arise?

A. Even now in spite of registration of documents there are false cases.

Q. Supposing we have got conclusive proof of the age of the girl, why do you think false cases will come to court? There are sections like 323, Indian Penal Code, which will prevent false cases, and the man who brings the case will be prosecuted. There are false cases in the world in spite of there being safeguards. Do you mean to say that because there will be one or two false cases there should be no law at all? Or do you think the cases will be overwhelming in number?

A. I think the number of false cases will increase.

Q. The number of breaches of the law will increase as also the number of false cases. Do you think that the number of false cases will increase so numerously that it will be dangerous on the part of the State to legislate?

A. It would not be dangerous to the State but to the people.

Mr. Shah Nawaz: You want that the age should be raised to 15?

A. I do not want any legislation. The law won't be effective.

Q. Supposing we legislate that nobody shall be allowed to marry before 14 and if the marriage does take place the parents will be punished. The factum of marriage would be a patent fact known to so many persons and the village body. A complaint can easily be lodged and the man can be brought to book. How do you think that the law will be ineffective?

A. Nobody will set the law in motion and no evidence will be forthcoming.

Q. You mean that the people will not take the trouble of going to the court?

A. People who have no interest will not report and the interest in such cases will be when there are two candidates for a girl. Unless some person

interested gives notice to the police there will be no case. People won't take up the case for an honest motive.

*Q.* Don't you think social propaganda *plus* legislation would bring about the desired result of bringing cases to light?

*A.* There will be many that will not be brought to the police.

*Q.* But there will be some.

*A.* Very few.

*Mr. Kadri :* Was this question ever discussed at your Anjuman or the other body with which you are connected?

*A.* No.

*Q.* Are you very anxious to carry on propaganda and social reform work?

*A.* Yes.

*Q.* You also agree that at no age below 15 is a girl fit for consummation?

*A.* Yes.

*Q.* Then don't you think that legislation would give a good handle to you to carry on propaganda work? Generally the people are afraid of law.

*A.* When the call for social reform comes from within it will be more effective than law.

*Q.* But will this not assist the social reform movement with it?

*A.* People will do it of their own accord.

*Q.* Do you think people are so far advanced as not to need the fear of law?

*A.* In social matters I think there need be no law.

*Q.* We have travelled over several parts of India and we have found that there are many communities even among Mohammadans where early marriage and early consummation are practised and the leaders of those communities do want legislation. Would you recommend legislation in that case?

*A.* If the people themselves want, I can't object to it.

*Q.* This is an all-India legislation. Would that induce you to accept their opinion?

*A.* If you find that a large number of Mohannadan brethren require it, if the majority of the people require it I will follow them.

*Q.* What age would you recommend for extra-marital cases? Some witnesses have said that it should be at 16 and others say it should be fixed at 18.

*A.* I would like to have 16.

*Q.* Not 18. 18 is the age of majority. Below that a girl cannot enter into any civil contract. Do you think she can be allowed to give away her chastity below that age?

*A.* I won't object to 18.

*Mr. Shah Nawaz :* But there will be false cases. It is very difficult to distinguish between 17 and 18?

*A.* I do not want that "unchastity" should be rampant.

*Q.* And will this not increase the number of false cases?

*A.* In spite of the fact that there may be false cases and that the number of criminal cases may increase I will like that the age for extra-marital cases should be fixed at 18.

**Oral Evidence of Mrs. SHARADA MANJURI DUTT and Mrs. M. K. GUPTA, c/o Rai Bahadur M. K. Gupta, Shillong.**

(Shillong, 15th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

*Mr. Kanhaiya Lal:* May I know whether both of you belong to any particular Association in Shillong?

A. Yes.

Q. What is the name of your Association?

A. Shillong Mahila Samiti.

Q. What is the membership of this Association?

A. About 100.

Q. Does this association contain only Bengali ladies or all classes of people?

A. Ladies of all communities are members here.

Q. Have you got Muhammadan lady members?

A. Yes.

Q. How many are they?

A. Only one by name Mrs. Mozil.

Q. May I know what are the objects of your Association?

A. Advancement of social, religious and economic conditions of women in Assam.

Q. Are you now representing the views of your individual personalities or the views of your Association?

A. We have not consulted others but we fully represent the views of the Committee.

Q. How long has this association been in existence?

A. For the last 42 years.

Q. Have you had any occasion to discuss the subject of child marriage or of the Age of Consent in the Association's meetings?

A. We discussed Mr. Sarda's Bill only a few months ago.

Q. Can you tell us what was the conclusion that you arrived at at that meeting?

A. The conclusion that we arrived at was, that we should support Mr. Sarda's Bill.

Q. Are you in favour of fixing the minimum age of marriage at 14?

A. We consider that 16 should be the minimum age of marriage.

Q. Can you tell us what is the usual age of marriage amongst the various communities in Assam?

A. The Bhadrals get their girls married at 11 or 12 or say from 10 to 13. Amongst the Kayasthas and Vaidyas generally the girls are married over 14.

Q. Are there Kshatriyas here also?

A. There are no Kshatriyas here.

Q. What is the usual age of marriage amongst the Namasudras?

A. They celebrate their marriages even at 5 or 6, for instance the sweepers and other very low classes of people marry at 5 or 6.

Q. You recommend 16 as the minimum age of marriage. Would that be acceptable to the various communities from Brahmins downwards who marry early?

A. It will be opposed in the beginning.



**Q.** Will they obey the law or will there be more breaches of the law than observance of it?

**A.** As long as they are not sufficiently educated they will oppose it and every effort should be made to educate them but even if they oppose, this law should be enacted in the interests of the country and others. We feel that it is dishonourable to the self-respect of the nation to have such a legislation but when we see the evil effects of early marriage, we cannot help recommending some legislation of this sort.

**Q.** But as Mr. Sarda has proposed 14, would you be satisfied with it as a first step.

**A. (Mrs. Dutt).** I say that even if you fix 14 as the minimum age of marriage there will be opposition and so have it once and for all fixed at 16.

**A. (Mrs. Gupta).** As a first step we can have 14.

**Q.** What is the practice about consummation of marriage amongst the various communities where child marriage is practised?

**A.** The custom here is that girls are not sent to their husbands' houses before puberty.

**Q.** What period would you recommend should elapse after puberty in order to enable consummation to be effected without injury to the mother or to the progeny?

**A.** Two or three years should elapse after puberty.

**Q.** What minimum age do you recommend for consummation of marriage?

**A.** We personally think that girls should not be sent before 18 years.

**Q.** Do you think that you will be able to look after the girls upto the age of 18?

**A. (Mrs. Dutt)** This point struck me also. If they are not engaged till their 18th year with education or some such thing, it would be risky.

**Q.** Would you recommend 15 or 16 as the minimum age of consummation of marriage?

**A. (Mrs. Dutt).** Rather than reduce the age, steps should be taken for proper education of these girls till their 15th or 16th year.

**Q.** Do you not think that till the education has been advanced to the right standpoint, numerous cases of breaches of the law will arise and the husbands will have to go to jails for those offences?

**A.** What is best to the interests of the country should be done and if you cannot arrange for literary education arrange for some other education.

**Q.** Until those stages are reached, shall we have a lower age for the penal law?

**A.** If by the majority of opinion you fix 16, then at any cost you have to provide for education till their 16th year. Suppose if it is 18, there is only a difference of two years and you have to follow the same procedure. Even if you fix the minimum age of marriage at 14 or 16, it is not every girl who will be married at that year.

**Q.** I am speaking of consummation of marriage.

**A. (Mrs. Gupta).** Excepting the Brahmin girls all the other girls are married late and we don't find any bad effects. For the time being you can fix 16 as the minimum age of consummation and then you can raise it to 18.

**Q.** Would 16 also not raise a great amount of opposition amongst the upper classes or would they accept it?

**A. (Mrs. Gupta).** I think there will not be any great opposition as regards the consummation law if it is fixed at 16.

**Q.** Supposing the wife and the boy husband under 18 are thrown together and consummation takes place, would you recommend that the husband should be punished or the parents of the girl or the boy should be punished?

A. (Mrs. Gupta). I say that the guardians of the boy should be punished.

A. (Mrs. Dutt). I have no decided opinion on this point.

A. (Mrs. Gupta). I say that the person who is found responsible for this should be punished, and not the parents of the girl or boy should be punished as I said above.

Q. Up to what age would you exempt the boy from punishment?

A. We cannot reply to this question, and we haven't considered this matter.

Q. Similarly if the marriage law is infringed, who should be punished for it?

A. The person who is responsible for it should be punished whoever he may be.

Q. Have you come across girl mothers who have suffered very much by reason of early consummation and early maternity?

A. Yes. We know of many instances.

Q. Do you think that the children born of grown-up mothers are healthier and stronger than the children born of young mothers?

A. Yes.

*Dr. Beadon:* In those cases of early maternity which you say you have seen, can you give us details of one or two cases as to whether these young mothers had any troubles?

A. From our personal knowledge and experience we say that the delivery is very difficult when the mother is young.

Q. Will you give us the age of any girl that you have seen having early maternity?

A. (Mrs. Dutt). I have seen cases of girls aged 14 and 15 who became mothers for the first time.

Q. Did these girls deliver safely or did they die or did their children die?

A. (Mrs. Dutt). In the case of the motherhood at 14, there was little likelihood of both the mother and child surviving but after a good deal of troubles they were saved.

Q. When did this happen?

A. This happened a long time ago.

Q. Do you know of any such cases in the last three or four years?

A. (Mrs. Dutt). I was ill for the last five years and so I don't know any case during these five years but I know of cases before that. I will give you one instance. I saw a girl giving birth to a child at her 14th year. I saw the child a year and a half afterwards and found that the lower portion of his body was paralysed.

Q. What about the mother?

A. Her health was very bad.

Q. How long ago did this happen?

A. This happened five or six years ago.

Q. To what caste did this girl belong?

A. This girl was a Hindu Brahmin.

Q. Was she a girl who had good health before?

A. I have seen her after the childbirth but I cannot say what was her state of health before that.

Q. Has she never had a second child?

A. A year and a half after that she had another child.

Q. Was there also difficulty in that too?

A. The second child died, he had also a part of his body paralysed. Now, she has got some children born long after but her health is very bad.

*Q.* Now you have had an opportunity of seeing the children of these young mothers. What do you think about them on the whole? Do you think that they are as strong as the children of the older mothers?

*A.* In many cases, the children of these young mothers are quite undeveloped in early conception, and their general health is very weak.

*Q.* Do they grow strong afterwards or do they persist to be weak?

*A.* I haven't carefully noticed this.

*Mrs. Nehru:* Have you any experience of the villages also?

*A. (Mrs. Dutt).* I used to go to villages some times but usually I stay in towns.

*Q.* Do you know the customs and manners of the village people?

*A.* So far as I know I shall tell you.

*Q.* Amongst them, do they marry early?

*A.* Generally in the villages these early marriages occur but they are fewer in towns.

*Q.* Is early marriage observed in villages according to the caste of the people?

*A.* In villages the Brahmin girls are married early and the lower classes also marry their girls early.

*Q.* What are the lower classes in the villages?

*A.* They are also Hindus.

*Q.* Are there any pre-puberty consummations amongst them?

*A.* So far as I know amongst the lower classes there is no restriction in sending their girls before puberty. They do send the girls as soon as the marriage is over. I am confining my remarks to Sylhet and a part of Assam.

*Q.* Do you know whether this custom of sending girls straightaway after marriage is practised amongst the Brahmins also in villages?

*A.* Amongst the Brahmins, Kayasthas and the upper classes the girls stay with their parents before puberty. It is amongst the lower classes that these rules are not observed strictly.

*Q.* Has your association ever been preaching about the evils of early marriage and early consummation?

*A.* We discuss these evils in our meetings.

*Q.* Do you hold public meetings for this purpose?

*A.* Yes.

*Q.* Had you ever occasion to preach against these evils in the villages?

*A.* The meetings are called in different district towns but not in villages.

*Q.* In what other ways have you been working for the attainment of your object?

*A.* We have got a circulating library for the propagation of education amongst ladies.

*Q.* Do you circulate your books in the villages also?

*A.* Only the local people borrow books.

*Q.* Do you find that the Brahmins and those upper classes who are practising early marriages still consider it sacred on the ground of religion to have pre-puberty marriages.

*A. (Mrs. Dutt).* I say that they care for the religious injunction.

*A. (Mrs. Gupta).* I say that it is more or less the custom to observe pre-puberty marriages and I don't think that it is due to any religious injunction that they observe pre-puberty marriage.

*Q.* Will your association take up the initiation of these cases if such a law as is recommended by you is passed?

*A.* If we come to know the cases, we will report them.

Q. Should you not make it your business to know these cases?

A. We will try our best to know these cases.

Q. Do you think that you will get the public support if you do this sort of work?

A. The public may resent at first but we will try to convince them of our motives.

Q. As for punishment for the first offence would you like bonds to be taken from boys below 18 saying that they would not commit such an offence in future?

A. A warning or a bond will do.

Q. Would you like to have punishment of imprisonment if the offence is repeated in spite of the warning?

A. If the offence is committed for a second time punishment should be given.

Q. If the boy is old and the girl is below 12, would you like the punishment to be hard?

A. There must be a graduated punishment.

Q. Will you tell me as to whether there is a large number of widowers marrying for the second or the third time?

A. There are many.

Q. Do they marry young girls or grown up girls?

A. They do marry almost young girls some times.

Mr. Bhargava: In your opinion what is the age at which a girl is fit to give an intelligent consent in extra-marital cases?

A. 18.

Q. So far as the young ladies are concerned and the old ladies are concerned, is there any difference of opinion among them or both classes agree that there should be late marriages?

A. (Mrs. Dutt). Even mothers like myself want late marriages. Very old ladies say grandmothers want early marriages.

Q. What is the age when a girl attains puberty in the different classes?

A. Generally the usual age is 12 to 14.

Q. Do the orthodox people have any sort of social pressure upon them if they marry late or is it now tolerated?

A. There was social pressure before but now it has gone down a great deal.

Q. Is it a fact that during the last two generations there has been physical deterioration among the better classes of people?

A. We have noticed that and we agree with you that there is physical deterioration.

Q. Are the lower classes more prolific than the higher classes?

A. We haven't considered this question.

Q. Are the poorer classes more robust than the higher classes of Brahmins and do they live longer?

A. We cannot answer this question.

Mr. Shah Nawaz: Do you know many Brahmin ladies?

A. (Mrs. Dutt). I know a fairly large number.

Q. What is their opinion in respect of early marriage and early consummation?

A. So far as I know the Brahmins like to get their girls married early. The mother is for a comparatively late age but the father wants to dispose of the girl as early as possible.

Q. Do the girls now desire to have a voice in the selection of their husbands?

A. Yes, they cherish such a desire but they cannot express it.

Q. Do they give expression to it?

A. (Mrs. Dutt). They express it to their friends and not to the elders.

A. (Mrs. Gupta). I am also of the same opinion as Mrs. Dutt that the girls have a desire to have a voice in the selection of their own husbands.

Q. What methods do you adopt for the emancipation of women generally?

A. There is discussion about these matters in the association.

Mr. Kadri: Are there many cases of unequal marriages, i.e., widowers aged 45 and above marrying very young girls of 16 and under?

A. (Mrs. Dutt). There are many cases, because uptil now the persons marrying a second time had to marry virgins.

Q. Are there no widow remarriages allowed here?

A. Amongst the Hindus we have not heard of this.

Q. Are there widow remarriages amongst the lower classes?

A. Yes.

Q. Are the social reform organizations taking any steps to prevent such unequal marriages?

A. Not much.

Q. We have been told by some witnesses that frequency of maternity is more responsible for the injuries to women and children than early maternity. What is your opinion about this?

A. It is quite true.

Q. Comparatively speaking which is more responsible?

A. Early maternity is more responsible.

### Oral Evidence of Mrs. CHANDRAPRABHA SAKIGANE, Secretary, Assam Ladies' Association.

(Shillong, 15th December 1928.)

(Vernacular.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you the Secretary of the Association of Assamese women?

A. Yes.

Q. How many members are there?

A. About 1,000.

Q. Does it consist of members of all classes and castes?

A. Yes. It is a provincial association of all the districts in the Assam Valley.

Q. Does it include Mussalman ladies?

A. It includes Mohannedan and Christians also.

Q. Have you had any occasion to discuss such matters as marriage or Age of Consent?

A. We discussed Gour's Bill and Sarda's Bill and we are sending delegates to the All-India Ladies Social Conference at Calcutta.

Q. What do you think should be the age for marriage?

A. We were to discuss this in our conference which has for some reasons been postponed. There are resolutions for supporting both these Bills but the annual conference has not yet taken place and so no decision has yet been reached.

**Q.** May I know whether there are any communities in Assam among whom early marriage is practised?

**A.** That is practised only among the Brahmans.

**Q.** What is the usual age of marriage among them?

**A.** From 5 to 12. I know of villages and towns. Among the educated classes marriages take place between 11 and 13 but amongst the villagers and uneducated classes of Brahmans I have seen marriages celebrated between 5 and 12.

**Q.** And among other castes?

**A.** From 16 to 25.

**Q.** May I know to what caste do you belong?

**A.** I am a Kayasth.

**Q.** What is the usual age of marriage among the Kayasthas?

**A.** In lower Assam there are two Divisions namely Kamrup and Goalpara—In these two Kayasthas follow the Brahmans to a certain extent and generally the age is between 8 and 12. In Upper Assam which consists of four divisions Lakhimpur, Nowgong, Sibsagar and Duwan, the marriage age is between 16 and 25.

**Q.** Has it been a custom for a long time?

**A.** That is an ancient custom.

**Q.** What is the age of consummation in both these territories?

**A.** In the whole of Assam consummation is not allowed before puberty.

**Q.** Is any period allowed to elapse between the attainment of puberty and consummation?

**A.** That depends on individual cases but after the attainment of puberty *shati bia* is performed in some places a month or two after and in some places one or two years after. That depends generally on the development of the girl.

**Q.** If among the Brahmans a man marries his daughter after puberty is he ex-communicated or is he looked down upon?

**A.** It is now out of practice.

**Q.** Have you noticed any evil effects of early marriage among the Brahmans in lower Assam?

**A.** I have noticed that if a child is born early the child dies on account of ill health and weakness. Sometimes it dies in the womb and sometimes shortly after delivery.

**Q.** What age do you recommend for marriage?

**A.** Marriage should not be celebrated before 16.

**Q.** What age do you recommend for consummation?

**A.** If the marriage is celebrated at 16 consummation may follow.

**Q.** Do you think that the people will accept these proposals?

**A.** I do not think anybody will oppose it.

**Q.** Not even the Brahmans?

**A.** So far as I know Brahmans are also in their hearts willing to have late marriages and if a law is passed they will embrace the opportunity and find it as an excuse.

**Q.** If 16 is fixed for consummation of marriage do you think that the law will be respected and obeyed?

**A.** Yes it will be accepted because we have agitation here for the last 5½ years for raising the age.

**Q.** If the law is disobeyed and consummation is allowed before the prescribed age of 16, who should be punished, the parents or the boy?

**A.** Both the bridegroom and his parents should be punished but if the boy is below 16, the boy should not be punished.

*Q.* Will you include the mother in the punishment?

*A.* Mother should not be punished.

*Q.* Should the priest be punished?

*A.* Yes, it will be better if the priest is punished.

*Dr. Beadon:* Do you know of any cases of injury to any girls on account of early consummation or early maternity?

*A.* Yes I know of several cases.

*Q.* Could you give us examples of one or two cases?

*A.* I live in a village and I know that the villagers suffer from early maternity.

*Q.* Which village do you stay in?

*A.* I stay in Barpata sub-division but I move in all villages.

*Q.* Will you give us instances of any girls who may have suffered?

*A.* I know of an Ahun girl; the delivery took place at 17 and both the mother and the child died during delivery.

*Q.* Do you know of any cases of 14 or 15?

*A.* I do not remember any at the moment.

*Mrs. Nehru:* Has your committee been in existence for a long time?

*A.* Our Provincial Committee was organised two years ago.

*Q.* Is it a provincial organisation and not an all-India one?

*A.* It has not been affiliated to the All-India Constitution Committee.

*Q.* I suppose District associations have been in existence longer than that?

*A.* District committees have existed for the last 20 years.

*Q.* What are the objects of this organisation?

*A.* It stands for physical, mental and spiritual development.

*Q.* Besides meetings and discussions, do you run any educational or other institutions?

*A.* We have 7 Branch associations. We have started 6 educational girl schools in villages. We have orphanages to give shelter to helpless women. Stipends will be given for learning. We are sending our girls to Calcutta for higher education.

*Q.* Are you living in village because of your work or because you have your home there?

*A.* My home is there but I tour in all villages to help this institution.

*Q.* Have you noticed any difference in the age of puberty in different classes?

*A.* Generally the age of puberty is 12 but sometimes it is 14. In towns girls generally mature early while in villages it is 14. It depends more or less on the degree of luxurious life they lead.

*Q.* Have you noticed any difference between the Brahman girls in villages?

*A.* Yes, there is some difference. In those classes where girls are married early they attain puberty earlier.

*Q.* Is it earlier than 12?

*A.* It is seldom earlier than 12.

*Q.* Is widow marriage allowed in your class?

*A.* Yes, it is common except among the Brahmans. Among the educated classes it is also rare not because it is prohibited but because it is looked down upon.

*Mr. Mudaliyar:* What is the punishment that you would give for a breach of the law of consummation to the husband and to the parents?

*A.* Both imprisonment and fine should be imposed.

**Q.** Fine should be for the parents or for the boy?

**A.** If the boy is below 16 he should be exempted otherwise both the boy and the parents should be punished.

**Q.** What is the punishment that you would prescribe?

**A.** All that I say is that unless imprisonment is added the law will not be effective.

**Q.** Should the priest also be included?

**A.** Priest should be given more severe punishment. I know that priests go from house to house and ask people to marry their girls early and being tempted by these priests even non-Brahmans are following the Brahman.

**Q.** What is the extent of imprisonment that you would suggest?

**A.** Six months to one year.

**Mr. Bhargava:** Out of these 1,000 ladies who are members of the Assamese women's association, how many are Brahman, how many are Khasis and how many are Mussalmans?

**A.** About 250 are Brahman ladies and about 100 to 150 are Muslims.

**Q.** Have you had any occasion to talk with the orthodox Brahman ladies—what is their view?

**A.** I have had much discussion with these Brahman ladies. Many orthodox people say that Manu has prescribed marriage at 8, 9 or 10.

**Q.** Is it then due to religious injunction that Brahman girls are married early?

**A.** Yes.

**Q.** If you advocate that marriage age be fixed at 16, would it not be going against the religious notions?

**A.** The really cultured Brahman do not follow Manu. If they have read the Vedas they say that Manu is not binding.

**Q.** I understand that there are two communities of Brahman, one in favour of late marriages and the other favouring early marriages?

**A.** Even the majority of Brahman ladies are for late marriages.

**Q.** Among these 250 Brahman ladies who are members of the association, I understand that all of them are in favour of late marriages?

**A.** Yes.

**Q.** In villages there are two classes of Brahman ladies those who advocate late marriages and those who advocate early marriages. Is that so?

**A.** Yes. Even in villages the majority are for late marriages.

**Q.** What is the usual age of marriage of boys among Brahman?

**A.** Not before 25.

**Q.** No Brahman boy is married before 25.

**A.** In upper Assam it is never before 25 but in lower Assam sometimes it is 18 or 20.

**Mr. Shah Nawaz:** Will you send us a copy of the rules and objects of your association?

(The witness gave a copy which is appended.)

**Q.** Do Brahman lady members of your association take part in the discussion?

**A.** Yes.

**Q.** Do they express a view?

**A.** Yes they do and they pass all the resolutions. I can say that the resolutions supporting Sarda's Bill and Gour's Bill will be passed.

**Q.** Is there any dowry system?

**A.** Yes.



**Q.** Do the parents of the boy give dowry to the bride?

**A.** The parents willingly give but there is no compulsion.

**Mr. Kadri:** What is your association doing with regard to prohibition of early marriages?

**A.** Even before our association was started there was agitation to prohibit early marriage.

**Q.** What is the condition of marriage among Mohamedans?

**A.** Mohamedan girls are not married before 16.

**Q.** Do you know the views of the Mohamedan lady members of your association?

**A.** Mohamedan ladies are advanced. They say that even if the age of marriage be 20 they would not object.

**Q.** Are the provisions of the Age of Consent as it stands at present known in this part of the country?

**A.** In the villages people do not know.

**Q.** Will you help in doing some propaganda work in this respect?

**A.** Certainly.

**Q.** What age would you recommend for extra-marital relations?

**A.** 18 years.

**Q.** Do you think there is any danger of girls going astray on account of late marriages?

**A.** No.

#### *Aims and Objects of the Assam Mahila Samiti.*

1. This Association aims at giving a perfect godspeed to the Assamese women in points of their education, health, etc.

2. In order that this may be effected, this Conference aims at working out the items noted below:—

(a) That Ladies' Conferences be organised in different parts of the Province with a view to give the mothers an impetus to assemble and discuss all the important matters bearing on the duties of women, including education, health and bringing up of children.

(b) That steps be taken to see that Girls' schools are organised in different places and villages of Assam, that a feeling of the necessity of female education makes men send girls to school or to see that every girl is educated.

(c) That at least one poor asylum or ideal school be established in Assam.

(d) That widows, women wanting protection or discarded by society or involved in difficulties or women or girls abducted be uplifted and placed in the said asylum for protection and education.

(e) That orphans or motherless children liable to fall into the jaws of death for troubles and want of care be brought up and educated and trained for a worker.

(f) That a Committee of good workers, efficient mistresses or female volunteers be started in the said asylum.

(g) That it be so arranged that even illiterate or a little literate married girls or women of the said asylum or school may in a short period get all the ordinary practical training regarding household and other duties

(h) That more or less pecuniary aid be given to women wanting means or to girls of such families with a view that they may earn some independent living being trained in some paying line.

(i) That pecuniary assistance should be granted to poor but ambitious girls of good moral character to study Hindi, English, Sanskrit and other subjects or to be trained in nursing and medicine.

(j) That steps be taken for the welfare of the village women and children of the cultivator class in regard to their education, health and home industries.

(k) That steps be taken for perfect godspeed of the home industries of women and to establish spinning and weaving institutions.

(l) That baby and industrial exhibitions be organised along with the annual sittings of this Association.

(m) That a monthly magazine, suitable for women, be started.

(n) That steps be taken to find that books suitable for women be published.

(o) That good books written by women of poor means be published.

(p) That steps be taken to find that wants and demands of different kinds of the woman class are met.

**Oral Evidence of Miss H. BHAGUR, B.A., Mission Compound, Shillong, and Mrs. HILLY, Nurse, Child Welfare Centre, Shillong.**

(Shillong, 15th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

*Mr. Kanhaiya Lal:* Do you belong to the Khasi community?

*A. (Mrs. Hilly):* Yes.

*Q.* Can you tell me whether early marriage is practised in your community?

*A.* There are no early marriages in my community.

*Q.* What is the usual age of marriage among the Khasi?

*A.* 16 to 20.

*Q.* What is the usual age when consummation is effected amongst your community?

*A.* Immediately after marriage consummation is effected.

*Q.* Does this apply only to christian Khasis or to non-christian Khasis?

*A.* It applies to both.

*Dr. Beadon:* You say that you are working in the Infant Welfare Centre. Do you see cases in which early motherhood occurs or do you only deal with Khasi women?

*A. (Mrs. Hilly):* I deal with all.

*Q.* Can you say whether early motherhood occurs amongst the Khasi women below 14?

*A. (Mrs. Hilly):* I will send this information to you later on.

*Mrs. Nehru:* Can you tell us what is the state of education amongst the Khasi women?

*A. (Mrs. Hilly):* There is the highest state of education amongst them.

*Q.* What is the percentage of literacy amongst the Khasi women?

*A.* It is over 80 per cent.

*Q.* Does this apply to christian-Khasis as well as non-christians?

*A.* Yes.

*Q.* What is the age of puberty amongst the Khasi women?

*A.* 13 to 16 is the age of puberty amongst these Khasi women?

*Mr. Mudaliar:* What education do the Khasi girls have? Do they have English education or education in their own language?

*A. (Mrs. Hilly):* Both.

*Q.* Out of these 80 per cent. of the girls, how many go to anglo-vernacular schools and how many go to vernacular schools?

A. I cannot answer this question. Many girls go to middle schools and high schools.

Q. Do a good number go to high schools?

A. Yes.

Q. How many high schools are there for Khasi women in Assam?

A. In all the towns there are high schools.

Q. Do many of them go to Calcutta for graduate course?

A. Yes.

Q. What is the state of education amongst the boys?

A. About the same.

Q. What is the general age of the boys when they marry?

A. 18 to 25.

Mr. Mitra: Is there any case of abduction amongst the Khasi women?

A. Very rare.

Q. What do you think the age of discretion should be for the girls to realize the consequences of their acts?

A. (Mr. Hilly). It is very difficult to answer.

Q. At the age of 16 if there is maternity, do you expect any normal troubles?

A. There are troubles even in cases where the girls are aged 17 or 18. Troubles occur where the girl is not built up properly.

Chairman: Do you think that the weight of the babies is below the normal weight when the mother is 15 or 16?

A. (Mrs. Hilly). Some of the babies are very small and the babies are below the normal weight. As a rule these girls get very small babies.

Q. What do you mean by small babies?

A. I mean babies are small in size, and lower in weight.

Q. What is the safe age for maternity according to you considering the conditions in this part of the country?

A. I will recommend 18.

Q. Would 18 be acceptable to the people?

A. I will recommend 18.

Q. You say 18 for maternity is the safe age but then the consummation must be earlier, which must necessarily be 17 or 16. So what age would you fix for the consummation of marriage?

A. 17.

Mr. Bhargava: Do girls have a voice here in the selection of their husbands or do they select their own husbands?

A. (Mrs. Hilly). Sometimes they select their own husbands.

Q. May I take it that in a large number of cases the parents select husbands for girls?

A. The parents always consult the girls and *vice versa*. In other words, there is mutual consultation.

Q. Then it means that at the age of 15 or 16 the girls only get so much discretion that they are consulted in the selection of their husbands. The question is at what age would a girl be fit to select her husband without consulting her parents at all.

A. Here seldom one marries at 16.

Q. It follows that for the due realization of the consequences and the results of cohabitation, you would prefer the age to be 18 rather than 13 and 14. Is that not so?

A. Yes.

Q. Are there many cases of divorce amongst the Khasis?

A. There are a few cases amongst the Khasis.

Mr. Shah Nawaz: (To Mrs. Hilly). Can the marriage be broken at the option of the wife?

A. Yes.

Q. Are there many cases of divorce amongst the Khasis?

A. There are many cases.

Q. Are many cases brought to court for maintenance by the wife against the husband?

A. The Khasi women are so very independent that they can care for themselves and they do not care for the maintenance.

Q. Is there any dowry system among the Khasis?

A. No.

### Written Statement of Pandit SURJYA KUMAR TARKASARAS-WATI, Head Adhyapaka and Superintendent of the Silchar Chatuspathi.

The orthodox section of the Hindu Community have reason for deep dissatisfaction regarding the (proposed) provisions of the Age of Consent Bill. According to the Hindu *Shastras* such provisions should not be made to regulate the subject. Manu says: "In connection with framing of any new law relating to *Dharma* when required the King will make it based on a knowledge of, and not in contravention thereof, such things as the *Dharma* of Brahmins and other *Jatis*, e.g., *Jājan* (ministration), *Adhyapana* (teaching) and *Shastra Prachar* (propagation of *Shastras*); such *Dharma*, as in different periods, has come down in the country without being contrary to *Shastras*, from successive *Gūrtis*; such *Sreni-Dharma*, e.g., professional works of *Vaisyas* and other castes and such *Kūlo-Dharma* as has come down through successive generations". (1) Herein will be shown how the provisions of the Age of Consent Bill come in conflict with *Dharma Shastras*.

1. In *Dharma Shastras*, mention is made of marriage of girls both before and after appearance of menstrual flow. According to *Mahamahopadhyaya Bachaspati Misra* and *Raghnandan Bhattacharjee*, the age of marriage of girls is from 8 to 10 years (2); it is up to 12 years according to *Parasara Sanghitā* (3); it is 15 years according to *Dharma Pradipa* (4); and according

(1) জাতি জান পদান্ ধৰ্ম্মান্ শ্ৰেণীধৰ্ম্মাংশ্চ তত্ত্ববিৎ ।

সমীক্ষ্য কুলধৰ্ম্মাংশ্চ স ধৰ্ম্মং প্রতিপাদয়েৎ ॥

Manusamhita, Chapter VIII, Sloko No. 41.

(2) অষ্টবৰ্ষা ভবেদ্ গোৱী নববৰ্ষাতু যৌহিণী ।

দশমে কন্থকা প্রোক্তা অতউর্দ্ধং রজস্বলা ॥

Udbahatattba, Page 103.

(3) কন্থা দ্বাদশ বৰ্ষীয়া বা প্রদত্তা বসেদ গৃহে ।

ভ্ৰণহত্যা পিতৃস্তুস্তাঃ সা কন্থা বরয়েৎ স্বয়ম্ ॥

Parasarashamhita.

(4) বৰ্ষং পঞ্চদশং যাবৎ কন্থাদানং ন দুয্যতি ।

দেশাচারাত্ কুলাচারাত্ ব্রাস্ত দোষবিধিৰ্ম্মতঃ ॥

এবঞ্চোপনীতা পত্নী নাবমান্তা কদাচন ।

ন চ তাং বন্ধকীং বিদ্যান্মনুষ্যায়ত্নবোহব্রবীৎ ॥

Dharmapradipa.

to Maharshi Basistha and others, it is up to the time of appearance of menses (\*). Again, it is described in Ayurveda that in hot countries, the period of first appearance of menses is from 13th year, that cohabitation should take place 3 days after menstruation and that issues of a girl born of cohabitation before completion of her 16th year, becomes weak and idiotic, etc. (\*). What Susruta wanted to say was that in his time, while span of life was 70—80, females used to have in their 16th year and not earlier their first menses, that is to say, the full development of bodily organs. So the age of cohabitation (consummation of marriage) was 16 years. In the next Juga (period), owing to natural causes leading to diminution of the average age of men, females began to show themselves fully developed in the 13th year. Thereon it was laid down that 16th year in the case of a female should be held to mean the year of full development and not the actual 16th year of age and that cohabitation with a girl having full development was permitted whether she was actually 16 years or not. In other words cohabitation might take place before the girl was 16. It was also laid down that fitness for cohabitation should not be judged from appearance of menses alone, but should be decided on healthy appearance and growth of body as were in favour of signs of puberty (\*). Moreover spermatozoa may be washed away by swift menstrual flow, like dry wood in rivers' full current, if cohabitation take place within 3 days of menses. On the other hand, diseases may appear in consequence of menstrual discharge becoming thick, if cohabitation do not take place within next 13 days. Hence there is the direction for cohabitation during

(<sup>5</sup>) প্রদানং প্রাগ্ভোঃ ।

Bashista and Goutama.

(<sup>6</sup>) রসাদেব স্ত্রিয়ারন্তং রজঃ সংজ্ঞা প্রবর্ততে ।

তদবর্ষাদ্বাদশাদৃক্ং যাতি পঞ্চাশতঃ ক্রয়ম্ ॥

উন ষোড়শবর্ষায়ামপ্রাপ্তঃ পঞ্চবিংশতিম্ ।

যদ্যাধন্তে পুমান্ গৰ্ভং কুক্ষিস্থঃ স বিপদ্যতে ॥

জাতো বা ন চিরজীবৎ জীবৎ চূৰ্ণলেক্ত্রিয়ঃ ।

তস্মাদত্যন্ত বালায়াং গর্ভাধানঃ ন কারয়েৎ ॥

Susrut Samhita (Sharirasthan).

(<sup>7</sup>) ষোড়শ বর্ষং প্রায়িকং এতদক্সাগপি সাধুগর্ভ দর্শনাৎ ।

Tika of Astango Hridaya Sharirasthan, Page 369.

পীন প্রশন্ন বদনাং প্রক্লিন্নাত্মমুখবিক্রাম্ ।

নর কামাং শ্রিয় কথং গ্রস্তকুক্ষ্যাক্ষিমূর্দ্ধজাম্ ॥

ক্ষুনমুজ কূচশ্রোণি-নাত্মারুজঘন ক্ষিচম্ ।

হর্যোৎসুক্য পরাক্ষাপি বিদ্যাদৃভূমতীমিতি ॥

Susrut Samhita (Sharirasthan), Chapter III, Slokos 6 & 7.

the period of menses (\*). For these reasons, provision has been made for punishment, if no cohabitation take place during the period of menses (\*). In Assam and Bengal rules of *Smriti* as laid down by (Bachaspati) Misra and Raghunandan, are observed. Both of them are in favour of marriages before first menstrual discharges take place. For this reason, girls in this side are being given away in marriage even now at 10. But in older times married girls used to be kept in parents' houses until menstruation. At present that rule is not observed owing to many husbands living with wives in distant places where they work. Moreover, issues are reported to be occasionally born at 13. Is it possible to stem the tide by means of artificial reasons and means, of the natural causes which lead to girls menstruating at comparatively early age now-a-days? On the contrary, there is likelihood of married youngmen becoming involved in cases on account of sexual connection if such intercourse with married girls of 13, whose menses have begun to appear, be rendered punishable by law and there is every likelihood of infringement of rules of *Shastras* as well. Hence I have already set forth that the introduction of the proposed law would be quite repugnant to the *Shastra*-abiding Hindu subjects.

2. In my opinion, let the law on the subject remain what it is now, instead of making it more rigorous as proposed in the Bill. But in order to render it not inconsistent with the rules of *Dharma Shashtra* it is necessary to change the existing law to this extent only that the husband would be liable to criminal prosecution should he cohabit with his married wife of 13 or thereunder in the event of her still remaining without first menses. It is desirable to circulate by means of school books taught in higher school and leaflets distributed through *Sarpanches* in vernacular that cohabitation with girls before menstruation is forbidden both by *Shastras* and Medical Science. I believe that owing to such dissemination of knowledge, subjects will be careful of their own accord. The reason for this is: According to the Hindu *Shashtra*, *Bharatbarsha* (India) is called *Dharmabhumi* (10). Though there has been for different reasons some slight decline in religious beliefs in India,

(৪) অবর্তমানে রক্তে বীজঃ প্রবিষ্টং গুণ করং ভবতি  
যথা নদ্যাং প্রতিস্রোতঃ প্লাবীদ্রব্যং প্রক্ষিপ্তং প্রতি  
নিবর্ততে নোক্তং গচ্ছতি তদ্বদেব দ্রষ্টব্যম্ ।  
তস্মান্নিয়মবতীঃ ত্রিরাত্রং পরিহরেৎ ।

Susrut Samhita (Sharirasthan).

(৫) ঋতৌভার্য্যাং ন গচ্ছেদ্ যঃ স হি কৃচ্ছার্কমাচরেৎ ।

Prayashchittya Vibek, Page 352.

(10) উত্তরং যৎ সমুদ্রস্ত হিমাশ্বেশৈব দক্ষিনম্ ।  
বর্ষং তদ ভারতং নাম ভারতী তত্র সন্ততিঃ ॥  
তপস্তুপ্যাতি যুনয়ো জুহ্বতে চাত্র যজ্ঞিনঃ ।  
দানানি চাত্র দীয়ন্তে পরলোকার্থ মাদরাৎ ॥  
যতোহি ধর্ম ভূবেষা ততোশ্চো ভোগভূময়ঃ ॥

Brahmanda Puranam.

even now orthodox Hindus follow the Smriti and Puranas and orthodox Mahomedans observe the rules of the Qoran; religious instructions lead to the growth of knowledge and adjustment between the Shastras and artificial reasoning. Again artificial reasons or fear, though they may be effective for a time, never lead to permanent result. Hence it is laid down in Shastras that regulations of Shastras are productive of good and that artificial regulations are sources of mischiefs <sup>(11)</sup>.

13. At present pious and loyal Hindu subjects entertain no favourable opinion whatever in regard to the raising of the Age of Consent. They hold that injunctions laid down by Shastras and their propagation will lead to the eradication of unlawful and improper sexual intercourse. In matters religious neither is it proper that an innocent person should get in certain cases punishment under provisions of law of the Legislature nor that he should infringe in injunction of Dharma. On the contrary, the class of persons westernized in education, who want to have the Age of Consent raised by law, are probably not numerous. In this state of the country I cannot conceive it to be possible that the Government whose honest intention is to make good laws would undertake a legislation against Jatio-Dharma on a subject not connected with Rajkio-Karjya (functions of administration) without giving due consideration to the provisions of Hindu Shastras. Again it would be against the Hindu Shastras, if such a law raising the Age of Consent, as proposed, be passed by virtue of the majority of votes being in its favour. According to the Hindu Shastras, the procedure regarding election of members and the giving of votes is different from what it is in force under Government. It is this: According to the spirit of Hindu Shastras, matters religious cannot be discussed in Rajya-Shava (Legislative Assembly). Hindu kinds used to settle such matters in Dharmarajya-Shava (Religious Assembly). It stands written in the 38th Sukta, 3rd Mandal of Rig-veda, that there was provision in Baidik Juga for 3 Shavas (assembly), viz., Rajarjya Shava, Bidyarajya Shava and Dharmarajya Shava, for the purpose of performance of Raj-Karjya with the greatest regularity and order. Laws used to be made in these 3 Shavas, viz., those relating to administration in Raj-Shava, those for propagation of Shastras in Siksha (education) Shava and those concerning Dharma in Dharma Shava <sup>(12)</sup>. Maharsi Jagyabalka says: "Dharma Shava is one composed of 4 Rishis versed in Vedas and Dharma Shastras or formed by the entire body of Rishis (Rishi Mandal). That which the Shava will decide or that which a member of that Shava, who is well versed in matters spiritual, will declare as Dharma, is the Dharma indeed" <sup>(13)</sup>.

(11) উচ্ছাত্রঃ শাস্ত্রিতক্ষেতি দ্বিবিধং পৌরুষংস্বতম্ ।

তত্রোচ্ছাত্রঃ মনর্থায় পরমার্থায় শাস্ত্রিতম্ ॥

Jogobasista.

(12) ত্রীনি রাজানা বিদসে পুরুগি পরি বিশ্বাগি ভূষম সদাংসি ॥

Rigveda, 38 Sloko.

ভাষ্য সংক্ষেপঃ ।

একা রাজার্য্য সভা তত্র বিশেষতঃ রাজকার্য্যান্তেব ভবেয়ুঃ । দ্বিতীয়া বিদ্যার্য্য সভা তত্র বিশেষতো বিদ্যা প্রচারোন্নতী এব কার্য্যে ভবতঃ । তৃতীয়া ধর্ম্মার্য্য সভা তত্র বিশেষতো ধর্ম্মোন্নতিরধর্ম্মহানিশোচাপদেশেন কর্তব্য ।

(13) চত্বারো বেদধর্ম্মজ্ঞাঃ পষষ্ঠৈবিদ্যমেব বা ।

সা ক্রতে যং স ধর্ম্ম স্তাদেকো বাধ্যত্ববিস্তমঃ ॥

Tainabalkya Shanhita, 1st Chapter, Sloko No. 9.

According to Manu, the members of the above Shava, must be persons well acquainted with the Bedas, Nyayas, Niruktas and all Dharma Shastras which will be reverential to them. The Shava should not be constituted generally by less than 10 members, the irreducible minimum being 3. Moreover the single vote of a single member may be acceptable regarding a subject under discussion provided that he be fully cognizant of that matter; but the votes of a thousand persons who are not learned in such a thing will not be acceptable (14).

The power to make laws relating to these matters rests only on the Dharmarajya Shava as mentioned in the Vedas. The members of the above Dharmarajya Shava should be elected by the Hindu Public who follow the Barnasram Dharma as prescribed in Vedas and Manu Sanghita. Hence, as I have shown already, the proposed legislation which relates to Dharma, cannot be discussed and decided upon in the Legislative Assembly as it stands composed at present.

Manushamhita, Chapter XII, Slokas 110 and 111.

### Oral Evidence of Pandit SURAJ KUMAR TARKASARASWATI.

(Shillong, 15th December 1928.)

(Vernacular.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

Mr. Kanhaiya Lal: Are you head teacher in the Cachar Chatuspati Patshala?

A. Yes.

Q. How long have you been working in that school?

A. For the last 21 years.

Q. Are you superintendent of that institution?

A. Yes.

Q. Is it a purely Sanskrit patshala?

A. Yes.

Q. For what degree you send up boys?

A. For the Calcutta Title examination.

Q. Is it a school standard or a college standard?

A. It is a college standard.

Q. Can you tell us what is the practice about marriage in your community or in the communities that live in your part of the country?

A. In the District of Cachar among Brahmans marriages are celebrated between 9 and 13.

Q. And among other communities?

(14) জৈবিন্যো হৈতুক স্তৰ্কা নৈরুক্তো ধৰ্মপাঠকঃ ।

ত্ৰয়শ্চাত্ৰমিণঃ পূৰ্বে পৰিষৎস্তাদ্ভাবরা ॥

দশাবরা বা পৰিষদ্ যং ধৰ্মং পৰিকল্পয়েৎ ।

ত্ৰাবরা বাপি বৃত্তস্থা তং ধৰ্মং ন বিচালয়েৎ ॥

একোহপি বেদবিক্ৰম্যং যং ব্যবস্তেদ্বিজোত্তমঃ ।

স বিজ্ঞেয় পরোধর্মো নাজ্ঞানা মুদিতোহমুতৈঃ ॥



A. Except Manipuris all the other castes follow the Brahmans.

Q. What is the custom among Manipuris?

A. Manipuris perform *gandharva* system of marriage which is from 8 to 13.

Q. You are speaking of the Manipuris specially in Cachar?

A. Yes.

Q. What is the usual age of consummation among them?

A. There is a custom to have consummation after puberty but it is honoured more in breach.

Q. Does consummation take place before puberty?

A. Consummation takes place even before puberty.

Q. Is it in some classes or in all classes?

A. Amongst Brahmans consummation generally takes place after puberty but as regards others it takes place earlier.

Q. Is the *garbhadan* ceremony observed among Brahmans and others alike?

A. Yes, it is observed among all classes.

Q. Do you think any evil results are followed by early consummation or early maternity?

A. If consummation takes place early the child-girl's brain will suffer.

Q. Will the progeny also suffer?

A. The children will also suffer.

Q. What age would you recommend for consummation of marriage?

A. The present consummation law of 13 is according to the Shastras because the Shastras say that menstruation continues from 12th year to 50th year.

Q. But you say there are evil consequences resulting from early consummation. What do you think is the suitable age for consummation?

A. I am against consummation before puberty but I recommend it after puberty.

Q. At what age?

A. The law should specifically provide that whenever a girl attains puberty, even though she may be below 13, consummation may be permitted.

Q. How will you prevent evil consequences which you say follow early consummation if you recommend 13?

A. I rely on the fact of girl's attaining puberty—if it is 14 I am quite agreeable to have the law at 14, puberty should be the test and not the age.

Q. Does not Sushrut recommend that a girl is not fit for maternity till she is 16 years old.

A. Sushrut does not refer to any particular age. He means full development of the girl. According to commentators by the age of 16 he means full development of the girl.

Q. May I point out that Vag Bhatt mentions "*Purna Shodasha*, etc." and says: "If a child is born to a girl who has attained the age of 16 by a man of 20 the child will be strong and vigorous. If a child is born to a girl who is below that age the child will be either sick or short-lived, or there will be abortion". How do you explain that?

A. Here also *Purna Shodasha* means full youth.

Q. Is there any authority for that interpretation?

A. The same interpreter has explained it in both places in the same way.

Q. Do you want that the Age of Consent which is at present 13 should be retained or should it be reduced?

A. I want the present law to be changed by saying that the Age of Consent should be the age of puberty.

**Q.** Do you not think that there will be a great amount of uncertainty if we introduced in legislation anything of that uncertain character?

**A.** I think the fact whether a girl has attained puberty or not is easily ascertainable.

**Q.** Will you not be encouraging perjury and false cases by that means?

**A.** There will be some infringement of the law in the beginning, but if you propagate the Shastras in the villages a great number of people will observe the restriction.

**Q.** Do you think that the rule which lays that consummation should be within 16 days of the menses applies to the first menses or to later menses?

**A.** It applies to the first menses.

**Q.** Does it not apply to the marital state generally?

**A.** It applies within the 16 days of the first menses, otherwise Prayas-chitta should be performed.

**Q.** Is that rule recommendatory or mandatory?

**A.** The interpretators have said that you have to make atonements in a particular way. That means that the rule is binding.

**Q.** Does the rule apply to a man who has already got sons?

**A.** There also it is desirable, but it is not as much binding as it is in the case of the first approach.

**Q.** Is there any authority in the texts to the effect that the woman should be approached at the time of the first menses?

**A.** There is nothing in the texts to that effect, but the recognised canons of interpretation lay down that it is so.

**Q.** Would you recommend any law fixing the age of marriage?

**A.** Marriage can be celebrated up to the 12th year. Dharma Pradip says that marriage till the 15th year is allowed, if it is according to the local custom.

**Q.** Would you then recommend 15 for the age of marriage?

**A.** No.

**Q.** Is Dharma Pradip followed in any part of the country?

**A.** I cannot say definitely, but I think it is followed in Mithila, the present Muzaffarpur.

**Q.** What is the Shastra you follow in this part of the country?

**A.** Raghunandan and Vachaspati Misra. The latter is different from the other Vachaspati Misra who is the author of many philosophical works.

**Q.** What are the books of Vachaspati Misra which are followed in this part of the country?

**A.** Sambanda Chintamani and Santana Vivek are followed here.

**Q.** What is the age that is recommended in these books?

**A.** 8 to 10.

**Q.** What is the book of Raghunandan that is followed here?

**A.** Udvaha Tatwa.

**Q.** What is the age which he recommends?

**A.** 8 to 10.

**Q.** But you are personally prepared to go up to puberty?

**A.** I do not like to go beyond the injunctions of the Shastras. But following Parasara, I would personally recommend 12.

**Mr. Kadri:** What are the provisions in the Hindu Law about the education of girls?

**A.** The ideal of the Hindu woman should be to look after domestic affairs. As regards other things the same education has been prescribed for girls as for boys. But they should specially attend to domestic duties.

**Q.** Do you not think that early marriages stand in the way of the girls' higher education?

**A.** If consummation is not allowed early, it will not stand in the way.

**Q.** May I take it that you are in favour of consummation being postponed till the girl's education is complete?

**A.** I do not agree.

**Q.** Then how do you reconcile the two statements?

**A.** The girls would learn from their husbands.

**Q.** Supposing the husband is stupid?

**A.** The Shastras are against girls marrying stupid husbands.

**Q.** Are you aware that there are a large number of girl-widows between the ages of 5 and 15 in India?

**A.** Yes.

**Q.** Would you be in favour of widow re-marriage?

**A.** No. I am for widow re-marriage amongst Sudras, but not amongst the Dwijas.

**Q.** Are widow marriages permitted in the Shastras for Sudras?

**A.** Yes.

**Q.** Do you not think that we should do something to minimise the hardships of these virgin widows?

**A.** I am agreeable to have the maximum age of marriage at 13 and the minimum age at 10.

**Q.** Some of the lady witnesses examined this morning said that they would like to have a voice in the selection of husbands. Do you like the idea?

**A.** I do not like the idea.

**Mr. Shah Nawaz:** You say that you will prefer not to have marriages before 10? Would you render marriages before 10 invalid?

**A.** In the Hindu Shastras once a marriage has been celebrated it cannot be invalid.

**Q.** Do the Shastras apply only to the Brahmins?

**A.** They apply to all castes.

**Q.** What are the duties of a Brahmin according to the Shastras?

**A.** The Brahmin's duty is mainly to preach and do priestly work.

**Q.** Do you like that Brahmins should become judges and lawyers?

**A.** The Brahmin has been allowed by Manu to take up other duties according to *Apad Dharma*.

**Q.** Can Brahmins become members of the Executive Council or Ministers?

**A.** Brahmins were Ministers under many Hindu Kings.

**Q.** Do all the Brahmins observe the rule which lays down that a man should approach his wife within 16 days of the first menses?

**A.** Yes; we observe it.

**Q.** Do all classes of Brahmins observe it?

**A.** In Bengal and Assam all classes observe it.

**Q.** Supposing a girl attains puberty at 12, will you observe it?

**A.** Yes.

**Q.** Can you give instances?

**A.** I am a Professor in the Silchar Chatuspati and I know what takes place in Silchar.

**Q.** Do some persons consummate marriages even before puberty?

**A.** I cannot say positively, but I think there are some cases.

**Q.** Do you think that a Brahmin is guilty of *Bhrunahatya* if he does not consummate marriage within 16 days of the first menses?

A. I believe so.

Q. Do you think that people belonging to the low castes should ever remain low?

A. No; it is not desirable.

Q. Do you want the Shudras to become Brahmins?

A. No.

Q. Would you like the caste system to be abolished?

A. No.

Q. Supposing some advanced Brahmins want to abolish the caste system, what is the punishment?

A. That would be against the Shastras, and there is a prescription for atonement for such action.

Q. Can a Brahmin boy marry a low caste girl?

A. It is not allowed in the Kaliyuga.

Q. Supposing a Brahmin married a girl of the low caste, what is the punishment?

A. He should atone for his sin.

Q. Would you allow a Brahmin to possess property?

A. That is not against the Shastras.

Q. Would you allow the low caste people to enter temples?

A. There are public temples which they can enter, but not in private temples.

Q. Would you allow interdining amongst different castes?

A. No.

Q. Supposing people interdine, do they commit a sin?

A. Yes.

Mr. Bhargava: Is it not a fact that according to the Shastras it is not by Janna but by action that caste is determined?

A. That particular Sloka has two interpretations.

Q. Are there not instances where Sudras have become Brahmins?

A. It is not possible in this Kaliyuga.

Q. Is there any authority for your statement that it is only birth and not action which determines caste?

A. It is in Udvaha Tatwa. I will give you the reference later.

Q. According to Hindu law if a person has intercourse with a girl before she attains puberty, what is the penalty? Is it not capital punishment?

A. I do not know the text which says that.

Q. Supposing capital punishment has been provided in the Shastras for offences of that kind, would you be in favour of providing capital punishment for transgressions of the law?

A. We do not recognise all the Shastras. We recognise only those which are in "Vyavahar" in this part of the country.

Q. Then does it not mean that Brahmins who are having marriage late, namely, the Nambudri Brahmins in the South and the Kulin Brahmins in Bengal are as good as the other Brahmins who have marriages earlier?

A. Yes; there are also other customs like marrying the daughters of maternal uncles.

Q. Should those persons be punished?

A. If it is allowed by custom amongst them, they might be allowed to continue it.

Q. Then do you mean to say that it is not the Shastras but custom that should be followed?

A. 24 Rishis sat and made the Shastras, and they allowed these things in the South. They have prescribed certain areas, and have permitted certain customs in those areas.

Q. Supposing there are certain things in the Shastras which are contradictory, and people follow certain things which are contrary to local custom, and say that it is allowed by Vachaspati Misra or Raghunandan, would you punish them then?

A. I will accept it if Vachaspati Misra says that.

Q. Is there a Shashtra saying that Brahmins should live under Yavana rule?

A. I can cite Shastras saying that Brahmins should live under foreign rulers. I have got texts where it is said that for 5,000 years in the Kaliyuga white people will be our rulers.

Q. In para. 2 you say that in the next Yuga females began to show themselves fully developed in the 13th year. Is there any Shastric authority for that?

A. I do not remember the particular text just at present, but I have written it down from the Shastras.

Q. Further on you say that it was also laid that fitness for cohabitation should not be judged from appearance of menses alone, but should be decided on healthy appearance and growth of body. How do you reconcile the two?

A. This is in cases of Pratibandha or defects.

Q. Are you aware that in Vedic and subsequent times Garbhadan ceremony took place on the fourth day of marriage?

A. Yes.

Q. If that is followed even now when the girl is married at 10, how can that be done?

A. We cannot follow the Vedic rules now.

Q. Have not the Shastras laid it down for all times?

A. We cannot change these rules. Rishis have prescribed altogether different rules for the Kaliyuga.

Q. Can anybody of learned men change the Vedas?

A. This question was discussed in a conference and it was decided that modern people cannot change the Shastras.

Q. Can Rishis change the Vedas?

A. Yes.

Q. Where was this Conference held?

A. At Benares; it was the All-India Brahmin Conference.

Mr. Mudaliyar: You say that the Legislative Assembly should not interfere in a matter like this. Do you think that these matters can be settled in a Dharmarajya Sabha?

A. Yes; I hold that view.

Q. Are you agreeable to such a Sabha fixing the age for marriage and for consummation?

A. Yes.

Q. If the Sabha prescribed a particular age for marriage and a particular age for consummation, whatever the Shastras may say, will you agree to their injunction?

A. Yes; but the Sabha should be constituted in the manner in which we prescribe.

Q. From what caste of people should this be constituted?

A. From Brahmins and Pandits.

Q. Can any other caste be on the Sabha?

A. They can attend, but they cannot take part in the deliberations of the Sabha. Even amongst the Brahmins only those who are Varnashrama Dharmites can take part in the deliberations.

**Q.** Do you think that the rules made by this Sabha should be followed by the other castes?

**A.** Yes.

**Q.** Do you think that in this 20th century people will accept your suggestion?

**A.** I am still hoping against hope that they might.

**Q.** Should the members of this Sabha follow Manu?

**A.** Those texts of Manu only which have been accepted by Vachaspati and Raghunandan.

**Q.** Are you prepared to throw overboard the other texts of Manu?

**A.** I cannot give any opinion about it.

**Q.** How many Brahmins do you think will come up to the standard laid down in the texts you have quoted?

**A.** All members of the All-India Brahmin Conference at Benares follow the rules implicitly.

**Q.** Does Vachaspati or Raghunandan say anything about the text in Manu which says that Brahmins should not receive presents from the Sudras?

**A.** Raghunandan did not accept that rule.

**Q.** Can you quote the text of Raghunandan to that effect?

**A.** I will send you the text later.

**Q.** Do you know there is a rule to the effect that South of the Vindhya no Brahmin should reside as there are only non-Brahmins there?

**A.** I am not aware of any such text.

**Q.** Do you believe Vedas to be revealed books?

**A.** Yes.

**Q.** How can the revealed books be changed by earthly persons?

**A.** Rules have been laid down in these Smritis as to how earthly persons can change these things.

**Q.** Is it not a fact that all these interpretations have been made according to the convenience of time, place, locality and circumstances? Is it not a fact that nobody cares for the Shastras if it interferes with their convenience?

**A.** What is necessary in this Yuga has been already contemplated by the makers of the Shastras and they have prescribed punishments for infringements.

**Q.** Are not these practices really dictated by convenience?

**A.** I think the Rishis were omniscient and they have provided for all these things.

**Mrs. Nehru:** Can you tell me whether women will be given a place on this Dharmarajya Sabha of yours?

**A.** We will have no objection if we have women who support Varnashrama Dharma.

**Written Statement of Pandit SURJYA KUMAR TARKASARASYATI,  
Head Adhyapaka and Superintendent, Silchar Chatuspathi and  
President, Prachyashiksha Parisad, Silchar.**

I beg to send herewith specific references to the Shastras supporting my answers on three questions before the Age of Consent Committee at Shillong, which at that time I promised to supply on a subsequent date.

1. In reply I stated "In Ayurveda the word 'Shorashee' (sixteen) as used in connection with Garbhadan (impregnation), does not refer to actual age but to bodily development. It is occasionally seen that issues born as result of sexual intercourse with females under sixteen, become possessed of full brain powers. The great warrior Karna, mentioned in the Mahabharat, and Sivaji, the Marhatta hero, may be named as concrete instances among

many others. Accordingly in the Shastras, there is description of circumstances relating to two different kinds of 'Ritus' (puberty), viz., internal and external. On full appearance of the signs of the external Ritu, as mentioned by Sushruta even in a girl of twelve years, she may be called a 'Shorashi' (of full-bloomed youth) (1). And a girl may become Ritumati, that is to say, may menstruate even at the age of twelve or eleven. Kaviraj Arun Datta, the commentator of the work entitled 'Astangahridaya' written by Bhāghhatta, states that the age of menstruation is generally after twelve and that of cohabitation is 16, but adds that owing to vigour, girls may in certain cases menstruate even before twelve (2).

2. Dharma Pradipa was written by Govinda Guru. In it the age of marriage of girls has been stated to be up to 15 years. The book has not been printed for want of funds. It was written prior to the time of Mahamahopadhyaya Bachaspati Misra, for in the works of the latter, mention was made of 'Dharma Pradipa' in support of certain views (3).

(1) পৌনপ্রসন্নবদনাং প্রক্রিরাশ্নমুখবিজাম্ ।

নরকামাং প্রিয়কথাং গ্রন্থকুক্ষ্যক্ষিমূৰ্দ্ধজাম্ ॥

ক্ষুরন্তু জকুচশ্রোণি-নাভ্যরুজঘনক্ষিচম্ ।

হর্বোৎসুক্য পরাধাপি বিদ্যাদুতুমতীমিতি ॥

সুশ্রুত, শারীরস্থান, ৩য় অধ্যায়, ৬ষ্ঠ শ্লোক ।

(2) মাসি মাসি রজঃ স্ত্রীণাং রসজং স্রবতিত্যং ॥

বৎসরাদ্বাদশাদূৰ্দ্ধং যতি পঞ্চাশতঃ ক্ষয়ম্ ॥

পূৰ্ণবোধশব্দা স্ত্রী পূৰ্ণবিংশেন সঙ্গতা ।

বীৰ্য্যবস্তং সূতংসূতে ততোনৃনাদয়োঃপুনঃ ।

রোগ্যগ্নায়ুরধস্তো বা গর্ভো ভবতি নৈব বা ॥

এমাং সংক্ষিপ্ত টীকা ।

বাদশাদিতি প্রায়িকমেতৎ একাদশবার্ষিকানা মপি স্ত্রীণাং রক্তপ্রবৃতি দর্শনাৎ । পূৰ্ণবিংশেনসঙ্গতা পূৰ্ণবোধী স্ত্রী বীৰ্য্যবস্তং পুত্রং সূতে । প্রায়িক-  
কৈবেতদর্শনাগপি সাধুগর্ভ দর্শনাদিতি ।

বাগ্ভট বিরচিত 'অষ্টাঙ্গহৃদয়',

শারীরস্থান, ১ম অধ্যায়, অরুণ দত্ত কবিরাজ

কৃত সর্বোক্তসুন্দরী টীকা । ৮ম, ৯ম ও ১০ম শ্লোক ।

(3) নন্দাদেবমুপাতিং ত্রিভুবনানন্দৈকমূলং পরং

প্রোক্ষামহ্যতিমজ্জটালি নিবিড়ালঙ্কারহারপ্রজম্ ।

মহাদ্বিস্মৃতি ভারত শ্রুতিমতান্শালোচ্যবাজ্ঞজয় ।

শ্রীগোবিন্দগুরুঃ করোতি নিখিলং ধর্মপ্রদীপং বৃধঃ ॥

ধর্মপ্রদীপ ।

3. I said in reply at Shillong that 'Patitya' (degeneration) did not, according to Raghunandan, result in the Kali Yuga to such Brahmins who receive gifts from Sudras. Mahamahopadhyaya Raghunandan Bhattacharjya states, in his 'Suddhitattva', after quoting therein statements of Manu and Angira, 'In order to maintain Kutumbas (relations), Brahmins should receive gifts also from the Sudras. An embarrassed Brahmin is certainly entitled to receive gifts even from all persons. Things thus obtained shall not adversely affect the purity of such a Brahmin (').

**Oral Evidence of the Hon'ble Sir Salyad MUHAMMAD SAADULLA,  
Minister of Education, Assam.**

(Shillong, 15th December 1928.)

(Rai Bahadur Pandit Kanhaiya Lal presided.)

*Mr. Kanhaiya Lal:* May I know to what district you belong?

*A.* I come from Kamrup, which is at the foot of the hills.

*Q.* Are you a member of the Bar?

*A.* I was.

*Q.* How long were you practising at the Bar?

*A.* I was practising for 12 years in the mufussil courts and for five years in the High Court.

*Q.* Are you in charge of Education at present?

*A.* Yes.

*Q.* Have you got experience of other Districts besides Kamrup?

*A.* I can safely speak for all the six districts in the Assam Valley.

*Q.* Can you tell us in which community early marriage is observed?

*A.* Early marriage is more rampant in the Hindu community but not in my community.

*Q.* What is the usual age of marriage amongst the Muhammadans in the districts?

*A.* About 15.

*Q.* Amongst the lower classes are there early marriages even amongst the Muhammadans?

*A.* No.

*Q.* Would you recommend a legislation fixing the minimum age for marriage?

*A.* No.

*Q.* Why not?

(\*) কটুবার্ধে বিজ্ঞানাদ্ৰ্যং প্রতিগৃহীত যচিতি ।

অজিরা ।

সৰ্বতঃ প্ৰতিগৃহীয়াৎ ব্ৰাহ্মণস্তনয়ংগতঃ ।

পবিত্ৰঃ দুষ্যতে হেতুদ্ ধৰ্ম্মতো নোপদিশ্যতে ॥

নাধ্যাপনাদ্ৰ্যাজনাদ্ বা গৰ্হিতাদ্ বা প্ৰতিগ্ৰহাৎ ।

দোষো ভবতি বিপ্ৰানাং জ্ঞানাস্থ সমাহিতে ॥

মম্বু ।

ৰঘুনন্দন ভট্টাচাৰ্য্য কৃত 'শুদ্ধিতত্ত্ব' ৫৫০ পৃষ্ঠা ।



A. It will not be acceptable at least to the majority. In the Assam Valley, roughly speaking, about 85 per cent. of the population are Hindus and only about 15 per cent. are Muhammadans. So far as the Muhammadans are concerned they do not require any law and so far as the Hindus are concerned they will resent and will not like it.

Q. Still what is the minimum age you propose so as to be acceptable to all the communities here?

A. No age should be fixed for marriage.

Q. Can we fix at least 12 by legislation for marriage?

A. No.

Q. Are you in favour of fixing the age for consummation of marriage by legislation?

A. No.

Q. Are you aware of the present Age of Consent Law which is fixed at 13 as the minimum age for consummation?

A. Yes.

Q. Is it observed or violated?

A. It is more or less a dead letter. Nobody takes the trouble of enquiring into it.

Q. Do you think that there are breaches of this law in this part of the country?

A. I think so, but not amongst Muhammadans.

Q. But are cases of consummation before 13 very rare?

A. I cannot say the cases are rare. Just now we heard from the Pandit himself that these are not rare. They do happen.

Q. Can you suggest any method for bringing these cases to light?

A. I don't see any way for bringing these cases to light unless the parties themselves choose to bring such cases to the Court.

Q. Would you be in favour of an advancement beyond 13 which is the present law?

A. Before you expect me to recommend the advancement of the age of 13, I must say that you are now incurring a heavy expenditure to know the real age of the parties. At present there is absolutely no definite basis to proceed or from which you can gather the exact age of the parties. Rev. Nichols Roy who is in charge of the department of registration of births and deaths, etc., will be able to give you better information on this point. But speaking from my own experience in the Assam Valley, this registration of births is left to a set of people who are not Government servants but are supposed to be village headmen, and who get 8 or 10 bighas of land as compensation for this work and also these people have to help Government servants when they go to these places. So, these people are not keeping accurate figures of births and deaths.

Q. Are the figures in the municipal areas accurate?

A. No.

Q. Can you suggest any measures for improving the system of registration of births and deaths for city areas and for rural areas?

A. It might be possible for city areas but for rural areas it might be a very big question.

Q. Would you recommend a law or a rule saying that every guardian must report every birth within a certain time?

A. In municipal areas there are laws or bye-laws in force to this effect. But what is the use of putting down in the register that a child has been born to a certain person without giving the name. In Hindus they cannot give the name immediately and they have got a certain ceremony called "Namkarana ceremony" and they generally give the name to the child after a year, and amongst the Muhammadans they generally follow "Aqiqah"

ceremony which may or may not be performed at all. So unless you know the name of the child, it is no use putting in the register that such and such a child was born to such and such a person.

Q. Would you recommend that a supplementary report should be required from every parent giving the name of the child within a certain time, when the name is not given already?

A. If you can enforce it so far so good.

Q. Another suggestion is that in every report which is to be made by the parent or guardian giving the name of the child, the order of births also should be noted, i.e., whether this was the first child, or the second child and so on. Do you think this will be helpful?

A. I don't think it will help you.

Q. A third recommendation has been made to us, viz., by the time of vaccination generally the name of the child is given and it is entered in the vaccination register and this name should be transferred to the birth register from the vaccination register. Do you think that this system will help us?

A. No. As a matter of fact I had the vaccination of my own child three years after her birth.

Q. Is there no rule that vaccination should be made within a certain time?

A. There is compulsory vaccination.

Q. So is not every child to be vaccinated within a certain period?

A. So far as I remember there is no such strict rule.

Q. Is there any column provided for the name at all in the register of births?

A. Not that I know.

Q. What agency would you employ in the rural areas for the registration of births, viz., those men whom you mentioned or would you like to employ the executive authority or the *thana* officer?

A. The area is very small and if you put the executive authority in charge of this, I am sure it will work alright.

Q. Would you recommend that in rural areas a supplementary report should be made by every guardian or parent giving the name of the child within a certain period?

A. This rule is already there, but it is not made compulsory on them.

Q. Is this rule under some Act?

A. I know there is a rule, otherwise these people wouldn't have reported.

Q. Is there any statutory obligation on the parents in the rural areas that they should report?

A. Not on the parents.

Q. Suppose we have a rule of that character, don't you think that will help us in future as a more definite way of knowing the age?

A. If along with the date of birth of the child you put down the name of the child, born and if you can enforce this, then it will certainly be helpful to you but in that case there ought to be something about deaths also.

Q. We are not concerned about deaths but the rules that apply to the births will naturally apply to deaths also. Now suppose we have a proper system of registration of births then would you recommend that the age of consummation should be enhanced in order to secure better progeny and safe maternity for the mother?

A. Unless there is a safe standard to go by, I wouldn't go to the length of fixing an age for maternity and consummation.

Q. I don't want an age for maternity. What age would you fix for consummation?

A. That presupposes that.

Q. Concrete instances have been brought to our notice of girl-mothers at 13, 14 and 15 who have suffered and their progenies have suffered ill-health because of the practice of early consummation and early maternity. What measure would you suggest to protect these girls against early maternity and early consummation?

A. I will not support legislation unless you push it to the logical conclusion of restricting the conception. As people generally say women get a re-birth after delivery. Unless you have got some contraceptive methods, I don't think that will help you.

Q. Would you have a law for such methods as you advocate?

A. No. Anyhow I will leave the whole thing to the social organizations rather than to legislation.

Q. You say that the present law is not effective and cases do occur. Can you suggest any measures by which these cases can be brought to light?

A. Unless you make the offence cognizable, it is impossible to bring any cases to light.

Q. Do you know that under the present law up to the age of 12 the offence is cognizable?

A. Yes. I will make the offence cognizable under 12, i.e., up to 12 I will keep the present law as it is.

Q. It has been suggested to us that investigations in marital cases should be carried on only by superior officers of the police, say, for instance, Circle Inspectors or Deputy Superintendents of Police. Would you be in favour of this proposal?

A. If it were practicable I would have supported it.

Q. Don't you think that it is practicable?

A. No, because the area of Assam is very small.

Q. We know that the area is small; but there will be no necessity for more Deputy Superintendents of Police because there might be only very few cases in a year, say, three or four and for this the higher police officers might be deputed.

A. If you give the powers to lower police officers it might be abused.

Q. Would you like to support the proposal of having these marital cases investigated only by higher police officers?

A. Yes.

Q. It has also been suggested that instead of these marital cases going to two different courts as it now happens, they might be sent up for trial to a matrimonial court consisting of a magistrate and two non-officials so that the trial can be expedited and better public confidence can be inspired. Would you support this proposal?

A. This will be much better.

Q. Another proposal has been made to us that in order to help the detection of these crimes, compulsory registration of marriages should be made, giving the ages and the names of the marrying parties. What do you think of this proposal?

A. I haven't got any personal experience of this. In my part of the country the marriages amongst Muhammadans are being entered through certain people.

Q. I am not only thinking of Muhammadans. I am thinking of the whole of India. How can you find out that a certain marriage has taken place before the prescribed age unless you have a common register where the marriages of all communities could be entered?

A. All this paraphernalia means "huge" expenditure, for a small province like Assam. I suppose if you spent all that money in spread of education, you needn't go into these laws.

Q. What is your objection to the system of registration of marriages?

A. I would call it a Notorious Act. As a matter of fact marriage is such an open and public function that no registration of marriages is required.

Q. In Baroda they have fixed the minimum age of marriage and the law there requires that every marriage should be registered as soon as the marriage takes place and wherever it is found by the executive officers that the law is infringed, they make a report for suitable action and the prosecution is started. Don't you think that the registration of marriages is the best method for starting the enquiry and for starting the prosecution?

A. I don't advocate registration of marriages. It will be paying too much into the family secrets.

Q. It has been suggested to us that in order that good relations might be re-established between the husband and the wife, these marital cases should be allowed to be compounded at the discretion of the magistrate?

A. Yes, but below 12 I would not allow compounding.

Mr. Kadri: So far as the Assam Valley is concerned, do you say that there is no need for fixing the minimum age of marriage?

A. Yes.

Q. But I may tell you that there are several communities in other parts of the country including the Muhammadans where early marriages take place. So for the sake of these people at least don't you think that a marriage legislation is necessary?

A. I will not fix the age of marriage at all.

Q. Do you think that it will be an interference with religion?

A. But many factors come in at the time of selecting a bride. Supposing I have got a girl who is aged 13 and I get a suitable boy for her and if you fix the age at 14, I shall have to wait for one year and the boy may not wait till that time and he may go to some other place. So I have to lose the chance of a good husband for my daughter.

Q. If there are exemptions, would you then agree to this proposal?

A. If you put exemptions, exemptions will be the rule.

Mr. Shah Nawaz: As a matter of fact, in other parts of the country early marriages are consummated at the age of 12 or 13. So don't you think that the Age of Consent should be raised?

A. If it one of general practice, then I suppose there ought to be some law to prevent it.

Q. About 32 per cent. practise early consummation apart from early marriage at 12 and 13 and these girls give birth to children at the age of 14. So, do you not think that we should raise the Age of Consent at some extent at least in the interests of mothers and their progenies?

A. I have already expressed my opinion that I don't like any interference by legislation in these matters.

Q. Don't you think that early marriage in itself an evil and leads to these marriages being consummated at such an early age?

A. Taking the climate into consideration I don't think that it is an evil.

Q. Would you accept medical opinion, if it proves that it is an evil?

A. May I know what is the age which the medical experts have laid down?

Q. As a rule they tell us that motherhood at the age of 15 or 14 is followed by very grave results for the progeny as well as for the mother. You should know that the medical opinion is absolutely unanimous on this point. There is no dissenting voice, and 16 is regarded as a fairly safe age.

A. I remember to have to read in the papers that some medical doctors have suggested 24 as the safe age for motherhood.

Q. Leave that out. We are talking of 14, 15 and 16. Supposing the medical opinion is unanimous on this point, viz., that a girl should not become a mother at 14 or 15 and the progeny will suffer and something must be done in the interests of the country, will you change your opinion?

A. I have followed the evidence that has been given before you and from that I find that the medical opinion is not unanimous and no hard and fast rules can be laid down to say that 16 should be the minimum age. When medical opinion is itself not unanimous, I would not like to fix anything.

Q. Practically for the age of 14 they are all unanimous. Would you accept their evidence in that case?

A. I wouldn't go so far as to accept their evidence. Of course everything will depend upon the physical development of the girl.

Q. Do you think that a girl at the age of 13 or 14 is quite fit to become a mother?

A. Well, some of the girls do become mothers.

Q. I am not talking about some of the girls who become mothers at a very low age. Supposing we find quite a large number of girls becoming mothers at the age of 13 or 14, and supposing we find that the mothers suffer and that their children suffer, then in the interests of the race and the country, should you not raise the Age of Consent?

A. I have already replied to this question. I don't think that it is the early conception that ruins the girl but in my opinion it seems that it is the frequency of deliveries and frequency of labour that undermine the health of the girls more than the first conception.

Q. Don't you think that requires a lot of education and there are many things which we must avoid?

A. I would leave all these matters to social workers rather than to legislation.

Q. Do you think that the fruits of social propaganda will be reaped within a short time?

A. So far as my community is concerned we don't want any legislation.

Q. Don't you know that we are really considering the other communities and all the other Muhammadans who are living in other parts of the country?

A. Yes.

Q. Having regard to the present state of the country and the position in which we are at present and the position of the girl, what are we to do. I want you to help us in the matter.

A. As I have already said, I would leave it to the people themselves. Excepting the Brahmins all other communities have given up early marriages.

Q. Don't you think that the Brahmins are the real persons responsible for all these troubles?

A. I wouldn't touch them at all. I would leave them to the Vedas and *Shastras*. Let them stew in their own juice.

Q. Will the Brahmins resent legislation?

A. They will resent in the sense that their liberties are being touched with.

Q. Don't you think that when we consider the interests of the country, we have to restrict the liberty of some?

A. Yes.

Q. Supposing you want to make a law of temperance, should you not have got to close the shops?

A. Yes.

Q. So also if it is found that early marriage and early consummation are evils, is it not the duty of the state to eradicate these evils?

A. I don't want that the state should regulate marriages, consummation or maternity.

Q. Do you mean that in this respect there should be no legislation?

A. Within marital state there should be no legislation.

Q. What age would you fix for extra-marital cases?

A. You can put as high as possible.

**Q.** Would you fix 18 as the minimum Age of Consent?

**A.** You can make it even 21, and I wouldn't mind.

**Q.** Why do you want to legislate in extra-marital cases?

**A.** Because outside the marital state we want to stop those seduction, abduction and rape cases.

**Mr. Bhargava:** It is an evidence that some girls attain puberty at the age of 11 or 12 and are consummated at once. Are you for repealing the present law because it is 13?

**A.** If I had any voice in making the law, I would surely have protested against it. Now that the law is there I would not go to the length of having it repealed.

**Q.** Have you come across any cases in which there has been injury to the girls at 13 or 14 during child-birth?

**A.** No.

**Q.** Supposing I tell you that when a girl of 13 or 14 gives birth to a child, necessarily there is injury to the mother and the child, would you then agree to raise the age to such an extent that the injury may be avoided?

**A.** Suppose you raise the Age of Consent to 14, well from 14 then you give limited liberty to the husband and wife.

**Q.** I remember you having said that you will be in favour of some legislation for contraception. Do you think that the country is ripe for this?

**A.** The country is neither ripe for this nor for the other, i.e., your raising the Age of Consent.

**Q.** I will give you two instances. Supposing when a girl is married at the age of 16 or 17 and she gets her first child at 18 and then there is frequent maternity and supposing there is another girl who is married at 13 and starts maternity at 14 and the frequency of maternity is the same, would you agree with me that in the case of the former girl the injury is less than in the case of a girl who is consummated at 13 or 14?

**A.** It has been said by many people whose wives haven't given births earlier than in the case of some of those ladies who conceived at a later stage, say, at 24 and 29, the child-birth has been difficult and dangerous.

**Q.** Do you mean to say that if a girl gets first maternity at 17 or 18, the injury is likely to be more?

**A.** I don't say so.

**Q.** Then will you agree with me that a girl of 17 or 18 will sustain the maternity better than a girl of 13 or 14?

**A.** Of course, I agree with you.

**Q.** Will you agree with me then that legislation will not be unjustified if one wants to bring about this state of things in which maternity may not come on before the age of 15, 16 or 17?

**A.** If you make it 24 as some doctors have suggested as the safe age for maternity, then I may agree with you?

**Q.** Leave that out. Don't you see that there is clearly a difference of five or six years?

**A.** I don't think there is much difference between the age of 13 and 18, so far as maternity is concerned.

**Q.** But supposing your suggestion is accepted and puberty is regarded as the criterion for finding if the law has been broken or not, will you agree with me that it will import such an amount of uncertainty into the law that it will be very difficult to detect cases?

**A.** Amongst the Hindus there is a certain custom which is called "Shanti Kalyan" and as soon as the girl attains puberty this puberty is celebrated as a public function. In that community there will not be much difficulty.

**Q.** Don't you see that this puberty celebration is falling into disuse on account of economic conditions and this safeguard also goes away?

A. If you say like that, I will say that on account of the economic conditions, this early marriage is also going away.

Q. So is it your idea that since early marriage is not rampant, therefore this law is not needed? Suppose I tell you that early marriage is very much frequent and early conceptions are also equally prevailing, will you then agree with me?

A. If the consummation takes place after puberty I wouldn't touch the question at all but if it takes place before puberty, I say the law is there and it can be raised.

Q. But even if there is a consummation law, according to you, it is very difficult to find out the cases of breaches of the law. On the contrary, if there is a marriage law fixing the minimum age, will it not help us in detecting the cases?

A. If there is no marriage, then there cannot be consummation.

Q. Therefore may I know whether you are in favour of fixing an age for marriage, say, 13 or 12, whereby this early consummation may be avoided altogether?

A. I won't ride a red horse. As I have already said barring the Brahmins, early marriage is going away and the consummation is also being postponed.

Q. Do you know the population of Brahmins in the whole of India?

A. I think they cannot be more than 1/20th of the population.

Q. As an administrator do you not think that the Brahmins have fallen into these evils and should be protected?

A. As an administrator I cannot give you any answer. I am giving you my personal opinion. Leave them alone.

Q. As a person interested in the Brahmins as much as in the other communities, should you not protect them?

A. They are not committing suicide.

Q. Don't you think that it is a national suicide?

A. Before puberty I am entirely with you but if it is after puberty, I won't touch them at all.

Q. Don't you see that whether consummation takes place before puberty or after puberty, unless you touch the age of marriage amongst the Brahmins, you cannot avoid the consequences of early consummation?

A. Yes.

Q. If that is so, will you then agree that for these Brahmins at least an age should be fixed for marriage?

A. No, I will not agree with you. Leave them alone.

Q. So that if there is marriage law fixing the age of puberty in every case this enquiry shall have to be gone into whether before marriage the girl has attained puberty or not?

A. Yes.

Q. Do you think this enquiry will not make it very difficult for cases to be successful?

A. If any cases do come to the court at all from the Bhadarlok class I do not think there will be any difficulty.

Q. You are in favour of fixing the minimum age at the time of puberty?

A. Yes.

Q. Are you of this opinion that if there are religious objections then there should be no law?

A. Yes.

Q. People think it is right to have human sacrifice would you as well hold this view?

A. The law is already down for man-slaughter.

*Q.* Suppose the law is not there?

*A.* Why should we think of a hypothetical case.

*Q.* Suppose there is a religious opinion that a certain evil may continue but the evil is big enough, would you then be in favour of legislation?

*A.* No.

*Q.* May I know your reasons?

*A.* As I have already said the rule of early marriage is going away surely but slowly.

*Q.* What is your idea—in how much time we shall be able to get rid of this evil of early marriage?

*A.* In another 20 years.

*Q.* If I tell you that in Bengal there is early marriage amongst the Mussalmans also and the evil is fairly great, will you then think that so far as Mussalmans are concerned there should be law?

*A.* I will fix law for anybody up to the age of puberty.

*Q.* If you are told that puberty does not come on except in the rarest case before 12. Would you fix the age at 12?

*A.* Yes.

*Q.* If there is a marriage law whom would you give the right of complaint? Would you like that every person may have the right to complain?

*A.* No.

*Q.* Then how would infraction of the marriage law be brought to light?

*A.* I will leave it to the guardians of the girl.

*Q.* In the case of marriage law the guardians will be culprits and the husband will be sinner. Law would provide that those who celebrate marriage will also be punished? If you leave the right of complaint to accused themselves there will be no case at all?

*A.* But the difficulty is that if I have got a grudge against you though you may not have committed any such offence, I can move the court and have you prosecuted.

*Q.* At present also this happens in regard to every crime. False cases are brought under section 323, Indian Penal Code, and other sections.

*A.* But those cases will be far more degrading to the people.

*Q.* Whom would you like to bring cases?

*A.* I have already said that you must make it cognizable.

*Mr. Mitra:* If a marriage law is passed fixing the marriage age of girls at 14, do you think there will be any opposition from the Mohamedan community in Assam?

*A.* I do not think there will be any opposition from the Mohamedans of Assam Valley.

*Q.* What age do you recommend for extra-marital cases?

*A.* I am prepared to raise it to any age.

*Q.* But what are your recommendations?

*A.* 18.

*Q.* In the Kamrup Division there is the practice that non-Brahmans are imitating the Brahmanas.

*A.* I see that non-Brahmans are trying to get away from the control of Brahmanas. They are not having any early marriages but they have got late marriages.

*Q.* Do you think there is no chance of non-Brahmans copying Brahmanas?

*A.* No.

*Q.* Do you think that orthodox Brahmanas feel that early marriage is enjoined by their Sastras?

*A.* Yes, that is what they tell us.



**Q.** And marriage among them is celebrated between 12 and 13?

**A.** They make it a point to get girls married before puberty. Sometimes they do conceal puberty but their attempt is to have marriage before puberty.

**Q.** As a Mohamedan do you think that if a law for marriage is passed it will go against the Mohamedan Law?

**A.** No.

**Mrs. Nehru:** Your only objection to this Age of Consent legislation is that people will object to it.

**A.** I am looking at it from both points of view. I am speaking from the girl's point of view. A man may commit so many sins but still he is married but if a girl commits a single sin her whole life is ruined.

**Q.** You think there is danger to morality?

**A.** My point is that as soon as a girl attains puberty she should be married. The longer you wait for her marriage the more will there be chances of her being spoiled.

**Q.** May I point out that amongst Mohamedans and amongst non-Brahmans there are already post-puberty marriages which takes place sometimes several years after puberty. Have you found any immorality amongst them?

**A.** I do not like to brand any particular community but there are cases of this sort when girls take to immoral profession.

**Q.** But sometimes girls have been obliged to take to that profession even late in life?

**A.** I do not mind her taking up that profession late in life because she has discerning powers.

**Q.** Do the instances you might have seen of girls going wrong after puberty, justify you to have those fears in your mind?

**A.** I am speaking of my experience as a lawyer. In towns 90 per cent. of the girls are in purdah and they get no chance of meeting together. In villages when girls take meals to the family working in the field they are raped. I have come across several such cases.

**Q.** There are chances of rape even if the girl is married.

**A.** Chances are much less, after marriage.

**Q.** The number of girls in cases of this kind which have come to your notice form an infinitesimal proportion of those who are married late in life after puberty. Is it not so?

**A.** One of the witnesses was telling you something about a certain custom in Upper Assam among the low class Hindus that is marriage by capture. I have noticed this custom among the low class Hindus in the Assam Valley. It is sanctioned by the social custom of those people. On the Bengali New Year's day there is a festival and especially singing of obscene songs are allowed and low class people join in that. During that time girls are abducted. Sometimes they are married and sometimes they are spoiled and left away.

**Q.** Is that among all classes?

**A.** It is prevalent only among the low class people of Assam Valley.

**Q.** When they abduct girls do they make sure that the girls are unmarried?

**A.** Generally the beauty spot is put on the forehead for that purpose. If a girl puts on that spot it means that either she has been married or she is engaged. If they do not put on any mark it means that she is supposed to be open to engagement and capture.

**Q.** Do you think that there is a large number of people of the orthodox way of thinking who will oppose this law?

**A.** It is the Brahmins who will oppose it but the tendency now is to give girls in marriage after puberty.

**Q.** You have suggested the age of puberty for the Age of Consent but if we want to have a law we will have to fix a certain age. What age would you recommend?

A. I do not recommend any age. Supposing you put in 14 as Age of Consent or marriage but a girl may not have attained puberty and if a husband commits rape on her you cannot punish him.

Q. If it is laid down in the law that she is not to be married before puberty you will have to ascertain in every case whether she has attained puberty or not.

A. In all rape cases you will have to get the help of a lady doctor.

Q. But lady doctors themselves are unable to say whether a girl has attained puberty or not?

A. I would prefer the age of puberty rather than fixing any definite age.

### Oral Evidence of Dr. ROBERTS, in charge Mission Hospital, Shillong.

(Shillong, 15th December, 1928.)

(Rai Bahadur Pandit Kanhaiya Lal, presiding.)

Mr. Kanhaiya Lal: Are you in medical charge of the Mission Hospital, Shillong?

A. Yes.

Q. How long have you been working in that capacity?

A. 15 years.

Q. And you have considerable experience of Assam and Surma Valleys otherwise?

A. Yes.

Q. Can you tell us whether there are any communities in which early marriage is practised?

A. That is not amongst the hill tribes.

Q. Do the people who come to your hospital belong to the hill tribes?

A. The chief number is from the hill tribes but others are coming more and more in recent years.

Q. Have you come across any cases of injury resulting from early maternity say at 13, 14 or 15?

A. Yes.

Dr. Beadon: Would you mind giving us any details of one or two cases of injuries within the last two or three years?

A. During the last 2 years we have had about 5 such cases.

Q. What was the injury—was the mother in danger in delivering the child or did the child die?

A. The mother had serious internal injuries. Her age was 14 or 15.

Q. Of what caste were those cases?

A. Some of them were hill tribes and others were Mohamedans.

Q. When you say hill tribes you mean Hindus or Mohamedans?

A. Hill tribes are mostly Hindus.

Q. Do they usually practise early marriage?

A. Not very early marriage.

Q. Usually when you meet these cases of early marriage you meet with serious injuries?

A. Yes.

Q. When you say internal injury to the woman you mean damage of the internal parts?

A. Damage to the soft parts.

*Q.* We have been told that in some of these cases there was great injury to the perineum. Do you find that or do you find fistula trouble?

*A.* You meet with both.

*Q.* Are there more cases of injury to perineum or fistula?

*A.* There are more cases of injury to perineum.

*Q.* You get fistula in women under 15 or in women over 15, 16?

*A.* In women under 15 there is no fistula trouble.

*Q.* Do you find that young women of under 15 stand labours easily?

*A.* They stand it much worse than girls of over 15.

*Q.* What about children of those cases—when children are born are they fairly well built?

*A.* No, they are weak and sometimes children die.

*Q.* Are those who born alive robust?

*A.* They are not as robust as the children of mothers who are 17 or upwards.

*Q.* They are not robust at the time of birth; do they not pick up afterwards?

*A.* They do not thrive.

*Mr. Kanhaiya Lal:* What is the safe age which you would recommend for consummation, having regard to the safety of the mother and her children?

*A.* 18.

*Q.* would you recommend 16 as a first step, considering the objections that the people are raising?

*A.* I would compromise with 16 to have 18 later on.

*Q.* But you would not go below 16?

*A.* Not in any circumstances.

*Q.* What is the safe age for maternity?

*A.* The reasonably safer age is between 17 and 18.

*Q.* And when is the pelvic ossification completed?

*A.* The ossification does not matter so much from the medical point of view. In the hill tribes you get considerably more ossification compared with the people in the plains.

*Q.* In other words would there be sufficient ossification at the age of 17 to permit of safe maternity?

*A.* The ossification does not matter. My opinion is that less ossification is an advantage because it is much more a question of uterine power.

*Q.* Is the development of pelvic bones a chief factor?

*A.* Yes.

*Mrs. Nehru:* Do you consider consummation before 16 even if it does not result in maternity as injurious for the health of the girl?

*A.* I am opposed to it. I think it is injurious for her growth and development.

*Mr. Mitra:* Is it your experience that girls at Shillong or in India mature earlier than in Europe?

*A.* I think to a certain extent it is true of the hill people.

*Q.* Do you find any difference in different castes and races?

*A.* Yes, it varies. Even amongst hill people it varies a year or two.

*Q.* Do you think that delivery is easier when the girl is below 20 than when she is over 20?

*A.* I do not agree with that.

*Q.* What is the easiest time for delivery?

*A.* The most satisfactory time for delivery is somewhere between 19 and

*Mr. Bhargava:* You say that attainment of puberty is different in different communities. May I know whether the practice of early marriage being prevalent in certain communities has anything to do with the early coming on of puberty?

*A.* I am certainly of that opinion.

*Mr. Shah Nawaz:* Do you think that early marriage and early consummation are one of the main causes of infant mortality?

*A.* Most certainly.

*Mr. Kadri:* Of the two factors—early maternity and frequency of maternity—which is the one more injurious to the mother and the infant? Some witnesses have told us that frequent maternity is more injurious to the safety of the mother. Do you agree with that opinion?

*A.* As one having experience of several years and having experience of maternity cases for 15 years in which interval two dozen or more children have been born I can say that much less injury has been done by frequency of deliveries than in the case of girls whose delivery took place early between 13 and 15.

*Mr. Kanhaiya Lal:* Do you see any difference in the normal weight of babies born of mothers between 13 and 15 and of those at 16 and 17?

*A.* My experience is that children born of mothers of 13 to 15 are smaller in size and less in weight and less robust than children of mothers of 16 and 17.

*N.B.*—(The witness promised to send figures later.)

**Written Statement, dated the 13th August 1928, of Maulvi Dewan ABDUR RAHIM CHOWDHURY, Chairman, North Sylhet Local Board.**

1. I do not know.

2. I should like making an advance on the present law.

3. Crimes of seduction or rape seem to be becoming more frequent than in the past. I do not think the amendment of the law made in 1925 raising Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside marital state or the improper seduction of girls for immoral purpose I do not think that any sort of hard and fast legislation would be effective in preventing or reducing the same, as majority of the cases do not come to the court. Many cases of rape especially amongst poor people pass unnoticed and even when they are noticed, are allowed to pass by the guardians of girls without any action under the existing laws being taken for two reasons, *e.g.*, (1) for fear of being humiliated in their society, (2) for fear of consequential costs and harassment if a complaint is lodged. In my opinion, to achieve the objects in view, it is necessary to make social reforms by means of social propaganda.

4. No. In my opinion the only effective means for protecting married girls against cohabitation with husbands within the prescribed age limit, is social reformations through organised propaganda.

5. Girls in this part of the country generally attain puberty between 12 and 13 years of age. To some extent it differs in different classes of people.

6. (1) Cohabitation before puberty is not common in this part of the country.

(2) Cohabitation soon after puberty is prevalent in almost all circles in the society.

(3) Cohabitation before the girl completes 13 years of age is also found in cases where the girl had attained puberty within that age.

I do not know of any such cases having gone up to the court for trial.

7. Practice of early consummation of marriage-before or at puberty is not a religious injunction.

8. "Goana" or "Garbhadan" ceremony is always performed in our part of the country by the Hindus, but not Mussalman. It is a religious injunction for the former. This is generally performed on the 12th day from the beginning of the first menses in the life of married girl and on the same day from the beginning of the first menses after marriage if the girl had attained puberty before marriage.

9. I think attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. Desires for cohabitation are naturally felt by a man or woman as soon as he or she attains physical maturity; but a due realisation of its consequences must be taught to him or her. Girls in India are generally so backward in education that it is difficult for them to understand what would be the consequences if the desires for cohabitation which she feels are realised. Such being the case an intelligent consent from her can hardly be expected.

11. No.

12. Early consummation and early maternity is surely responsible for high maternal and infantile mortality as also for various diseases in girls and the child.

13. Yes. It is confined to the educated section of the people I think.

14. No.

15. In many cases great difficulties are experienced in determining the age of girls. In case of disputes the decision rests on medical opinion which I do not think is well founded. Strict measures must be taken to enforce accurate registration of deaths and births.

16. To some extent it would minimise I think.

17. Yes. In case of marital offences the punishment should be slight, only to serve as a censure on the man in the eyes of his co-religionists. There should be no imprisonment. Fine to a maximum of Rs. 200 may be prescribed.

18. The procedure should I think be different. Offences without marital state should be triable by a court of session and that within marital state by an ordinary court.

19. I have nothing to suggest.

20. Penal legislation fixing a higher Age of Consent is likely to be more effective than legislation fixing minimum age of marriage. The latter will not be in consonance with public opinion, inasmuch as this would cause unnecessary hardship to many persons.

21. I would prefer both. Law would be of no use unless social propaganda is carried on to give effect to it.

### **Oral Evidence of Maulvi Dewan ABDUR RAHIM CHOUDHURY, Chairman, North Sylhet Local Board.**

*(Shillong, 15th December, 1928.)*

*(Rai Bahadur Pandit Kanhaiya Lal, presiding.)*

**Mr. Kanhaiya Lal:** Are you the chairman of North Sylhet Local Board?

**A.** Yes.

**Q.** Are you a legal practitioner?

**A.** No, I have got my own zemindari.

**Q.** May I know whether there is early marriage amongst any communities in your part of the country?

**A.** There are early marriages amongst low class Hindus and Brahmans.

**Q.** What is the usual age of marriage amongst them?

**A.** I cannot say definitely but sometimes a girl is married at 8 or 9.

**Q.** Among the Mohamedans what is the usual age of marriage?

**A.** Generally it is 15 to 16.

**Q.** Does consummation take place immediately after marriage?

**A.** Yes.

**Q.** Would you recommend any minimum age for marriage?

**A.** No.

**Q.** What are your objections to the minimum age of marriage being fixed?

**A.** It will not be in consonance with public opinion.

**Q.** Would you recommend any advance on the present age of consummation?

**A.** I would not favour any advance, I would keep it as it is.

*Mrs. Nehru:* In your statement you have said that crimes of rape and seduction have become more frequent than before. Could you give me any reasons for it?

**A.** I cannot attribute it to any reasons but the thing is that we find that this sort of crime is becoming more frequent.

**Q.** Have you not been able to find out any reason why it is more frequent?

**A.** No.

**Q.** Is it due to any change in the social life of people?

**A.** I think it might be due to luxurious life.

**Q.** Amongst which class of people are girls abducted or seduced or raped?

**A.** It is generally common among the low class of people.

**Q.** But you cannot say they are luxurious—they have on the other hand to work hard?

**A.** They are comparatively becoming luxurious.

**Q.** Who are the offenders?

**A.** They also belong to the same class.

**Q.** Is there any selling of girls here—are they sent to other Provinces for sale?

**A.** I do not know.

**Q.** Are they seduced by these people for their own purpose?

**A.** Yes.

**Q.** Do marriages take place after this seduction?

**A.** In most cases marriages do take place but in some cases they do not marry.

**Q.** What is generally the age of girls who are seduced?

**A.** Between 12 and 13.

**Q.** Are grown up girls also seduced?

**A.** I think only younger girls are seduced.

**Q.** You say in your statement that you would make an advance on the present law. What advance would you make?

**A.** I think a year or so.

**Q.** Then you would fix the age for consummation at 14?

**A.** Yes.

**Q.** What age would you recommend for extra-marital cases?

**A.** I think it should be 18.

**Q.** You think that attainment of puberty is sufficient indication for consummation of marriage? What are then your reasons for advocating an advance of age within marital relations?

**A.** From a medical point of view a higher age is better for the constitution of the girl.

*Q.* Does it not mean that the attainment of puberty is not a sufficient sign to show that a girl is fit for consummation?

*A.* I think it is sufficient but a higher age will be preferable.

*Q.* You have said that we ought to have accurate registers of births and deaths. Can you give us any definite suggestions about that?

*A.* That would be a huge task.

*Q.* You have not thought about it.

*A.* No.

*Q.* Have you any experience of the system of births and deaths?

*A.* Yes.

*Q.* Can you point out the defects in the system practised here?

*A.* So far as Surma Valley is concerned chowkidari system is prevalent. There is a chowkidar for each village or for group of villages. This chowkidar goes to the police station every fortnight and there reports to the thana officer in charge about all births and deaths. There they enter it into a regular register.

*Q.* Then where do you want a change?

*A.* The main duty lies in the hands of the chowkidar. Supposing he has not gone round the villages he will go to the thana officer and will report that no birth or death took place but if actually there was any birth during that period he will report it as having occurred during the next fortnight.

*Q.* Then in para. 13 you prescribe fine up to Rs. 200 as the punishment. Do you want this irrespective of the age of the girl?

*A.* I suggested this punishment only as a censure on the man who will be lowered in the estimation of the society.

*Mr. Mitra:* May I know if early marriages are not practised among the Mohamedans in the Surma Valley?

*A.* No.

*Q.* So if a marriage law is passed fixing the minimum age of 14, there cannot be any reasonable objection from the Mohamedans. Is it not?

*A.* There will be objections because in exceptional cases early marriages do take place.

*Q.* What is the percentage of early marriages amongst the Mohamedans?

*A.* I cannot say. It is only in those cases where parents want to get their girls married where they find a suitable bridegroom.

*Q.* Even where there are marriage laws in the Indian States they make exemptions for hard cases.

*A.* I do not know what exemptions can be made.

*Q.* In Baroda State if an old man is about to die and there is nobody to look after the daughter, exemption can be made.

*A.* But there must be somebody to convince the court that it is a fit case for exemption.

*Q.* Don't you think that there will be very few instances where these hard cases will be made out?

*A.* Yes.

*Q.* If there are exemptions provided do you think that Mohamedans in the Surma Valley will not have any objection to marriage law because they have no early marriages?

*A.* If sufficient safeguards are provided for exceptional cases there will be no objection from the Mohamedans of the Surma Valley.

*Q.* You have no objection to law fixing the age of marriage from the religious standpoint. In fact there is nothing in Islamic scriptures fixing the age either way.

*A.* I have no authority of the religious scriptures but so far as I know there is nothing against it in the scriptures.

*Q.* You do not know of any objection.

*A.* No.

*Q.* As regards Hindus can you tell us amongst what percentage of population, early marriages are practised?

*A.* I cannot give the percentage.

*Q.* Have you had occasion to mix with Hindu population?

*A.* Yes. In Surma Valley Hindus and Mohamedans live side by side.

*Q.* Do you think it is because of custom or on account of religion that early marriage is practised?

*A.* I cannot give authoritative opinion.

*Q.* Is early marriage existing in certain classes or it is existing amongst all classes?

*A.* It is amongst certain classes.

*Q.* Can you give us the castes amongst whom early marriages are practised?

*A.* These are Nama-sudras, Dums, Malis and so forth.

*Mr. Shah Nawaz:* Supposing we were to fix a minimum age of marriage, what should be the age in your opinion?

*A.* I am not in favour of fixing a marriage age.

*Q.* Do you think that girls should be married at the age of 12 and 13 amongst Mussalmans?

*A.* There is no harm if marriage takes place.

*Q.* Is it not a great evil? We are told that in Bengal 50 per cent. of Mohamedans marry early, isn't that against the spirit of Islam?

*A.* Of course personally I see no objection to fixing the age of marriage.

*Q.* What age would you recommend?

*A.* I think it should not be more than 14.

*Q.* What should be the age of consummation?

*A.* I have said that it should be after puberty.

*Q.* Do you think it is safe age for the marriage to be consummated?

*A.* I think the girl's constitution does not stand in the way of marriage.

*Q.* Do you think it is good enough for sexual intercourse and for maternity?

*A.* If marriage takes place at 13 maternity will be at 14 or possibly at 15. Personally I do not see any danger in maternity taking place at 15.

*Q.* Supposing doctors say that there is considerable harm to the mother and the offspring if maternity takes place at that age.

*A.* If that is the medical opinion I have personally no objection.

*Mr. Kudri:* In reply to Question 4 you seem to think that in order to make the law about the Age of Consent effective you would rely upon social reform and organised propaganda. May I know, if there are any Mohamedan societies carrying on social reform in this Province within your knowledge?

*A.* I have no experience of Assam Valley, but, so far as Surma Valley is concerned, I do not think there are any such organisations.

*Q.* Then where are the social reform organisations which should carry on this propaganda?

*A.* You must create one. Propaganda for social reforms will follow as soon as people are educated.

*Q.* Have you any suggestion to make in this matter?

*A.* I have not thought over it.

*Q.* In reply to Question No. 4 you say that attainment of puberty is a sufficient indication to justify consummation. What do you take as attainment of puberty?



A. It is the commencement of menses.

Q. You say there should be no imprisonment in any offences in the marital relations. Even though serious injury is caused to the girl would you be satisfied with fine only?

A. The punishment that I have suggested is meant to censure the man.

### **Oral Evidence of Dr. H. C. SARKAR, Health Officer, Shillong.**

*(Shillong, 15th December, 1928.)*

*(Rai Bahadur Pandit Kanhaiya Lal, presiding.)*

*Mr. Kanhaiya Lal:* Have you got figures of infant mortality and maternal mortality and comparative mortality of females and males between the ages of 10 and 15 and 15 and 20 and the other statistics asked for from you for the Shillong municipal area?

A. I have not got figures. I will send them later as soon as they are complete.

## Written Statements of persons not orally examined.

### Written Statement, dated the 4th August 1928, of Mr. T. R. PHOOKIN, M.L.A., Gauhati.

1. There is dissatisfaction with the state of the law as to the Age of Consent.

2. The circumstances which justify making an advance on the present law are shortly as follows:—

- (a) Girls generally attain puberty between the age of 12 and 14. It is then only, if already married, that they begin to have some idea of going to live with their husbands. Sufficient time after that should be allowed for that idea to grow into its fullness, so that when the couple actually comes to live as husband and wife, the girl may be a willing party to the consummation of marriage and not merely a consenting party under coaxing coercion of husband.
- (b) Puberty is not an unmistakable indication of maturity.
- (c) Being able to conceive is no guarantee that she has attained sufficient maturity to be a healthy mother.
- (d) Conceiving soon after attainment of puberty leads generally to evil consequences such as—
  - (i) Difficult labour.
  - (ii) Miscarriage.
  - (iii) Permanent physical injury to the mother.
  - (iv) Birth of weak children.
  - (v) Infant mortality.
  - (vi) Female diseases.
  - (vii) Combined effect on the mind of the young mother causing a dread for bearing more children.
- (e) Presence of fear while carrying a child leads to unfortunate results affecting both mother and the child. In short, a girl should not be allowed to be a mother before 16; and I think no special arguments need be adduced to substantiate this statement.

3. Not very frequent in our part of the country.

4. It has by the first two methods generally.

5. It is generally between 12 and 14.

I think Brahmin girls attain puberty a little earlier than other caste people; and the reason for that, I think, is that Brahmin girls are married (not other caste people generally) before puberty, and they are thus made to think of going and living with their husbands; and this brings in an unnatural and earlier development; and that is one of the reasons why marriage, if only a betrothal, should be postponed till about 16.

6. Girls in our part of the country are not allowed to live with their husbands till after puberty; consequently, cohabitation before puberty does not exist among any class or classes of people.

(2) Yes, among Brahmins.

(3) Not unless a girl is married very early and attains puberty say at 12. She will unfortunately be allowed cohabitation soon after she attains puberty, whatever her age may be. I have not heard of any such cases coming to court.

7. Not in our part of the country. It is purely a social custom which everybody is willing to break, but very few are willing to take the lead in doing so, on the basis of the famous saying “न मणव्यापतीगच्छेत् ।” There is no penalty for its breach in Assam.

8. ‘Garbhadan’ ceremony is generally getting into disuse in our part of the country, yet a good many orthodox Brahmins perform that ceremony, but never before or at puberty, but sometime after puberty.

9. I do not. Consummation should not be allowed before 16, or till 3 to 4 years after the attainment of puberty.

10. Not before 16.

11. I have come across a fairly large number of cases in which cohabitation soon after puberty resulted in injury to the health and body of the mother and the health of the children. I have known at least 100 mothers of about 14 suffering from uterine troubles, accompanied by ill health, invariably associated with early consummation of marriage. I have come across many old mothers of 16 saddled with three weak children undoubtedly brought about by early marriage and consummation.

12. I do.

13. Yes, there has been considerable development of public opinion in favour of extension of the Age of Consent.

14. They do not. They are positively against it.

15. There has not been much difficulty in that matter.

16. I do not expect, there will be any difficulty if that is done.

17. I am not for separating them into different offences; and I would have the same punishment for both the offences.

18. No, I would not. For in my opinion, no girl should be allowed to live with her husband before 16.

19. I have no further suggestion to make.

20. I think penal legislation fixing a higher Age of Consent for marital cases will be just now more in consonance with public opinion, although I am personally for fixing 16 years as the minimum age of marriage, for the complications of procedure in marital and extra-marital cases, collusion, extortion and such other difficulties would then altogether disappear.

22. If India were a free country I would surely have relied on social propaganda and education for achieving the desired object; but in India just now, under the present system of Government, there is very little of social progress or education in that direction. People, therefore, must be forced to do by legislation certain things that are absolutely necessary for the welfare of society.

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**Written Statement, dated the 10th August 1928, of Mr. PRAMODE CHANDER DATT, Advocate, Sylhet.**

1. I do not think the general public are exactly aware of the provisions of Secs. 375 and 376. Those who have taken up law as a career and the question of social reform are generally the persons who have the knowledge. Generality of them are dissatisfied with the existing state of the law.

2. I think the Age of Consent should be raised. Premature child-birth is ruining not only the health of the mothers but also increasing child mortality and bringing about physical deterioration.

3. No. The amendment of 1925 has not had any appreciable effect. The reason is that mere raising of the Age of Consent is not enough. It is difficult to detect infraction of the law and where detected, few would come forward to ruin the happiness of a family by bringing the case to a Court of law. The only way in which premature cohabitation can be prevented is by preventing marriage below a certain age.

4. Already answered in connection with Question 3.

5. The usual age at which puberty is attained by girl in this part of the country is 12 but physical development may hasten or retard.

6. Cohabitation depends very much on the age at the time of the marriage. Where marriage takes place before 13 which is generally the case except among *Bhodroloks*, it takes place before that age. Scarcely any case comes to Court.

7. No, except among the very orthodox Brahmins whose number however is exceedingly small. They quote texts from *Udbahatatwa* of Raghunan, which enjoins marriage before puberty and consummation at Garbhadan.

8. Yes. Garbhadan is generally performed within 15 days of the first sign of puberty. In educated families Garbhadan is going out of vogue.

9. No. I would put the minimum age at 16.

10. Realisation of consequences can hardly be expected from girls below 18 years of age.

11. I do not know of any case of the nature having come to Court during my professional experience of about 30 years, but I know as a fact that several girls suffer from the evil effects of premature cohabitation and die premature death.

12. Certainly.

13. I do not appreciate the difference which statute makes between marital and extra-marital cases. This is putting a premium on marriage a year earlier than 14.

14. As a general rule, no.

15. I have no experience. Difficulties of proving age are always there as we often see in abduction cases. The medical evidence or the opinion of the Judge or the Jury generally determines the age.

16. No.

17. No. I would prevent marriage below an age when consummation would be injurious to health.

18 and 19. No answer.

20. No. I think fixing of a minimum age would be welcome as more effective.

21. I am decidedly of opinion that legislation is necessary. Education and social propaganda can work but very slowly and are not always effective for the purpose.

**Written Statement, dated the 11th August 1928, of the Secretary, Bar Association, Silchar.**

1. There is not much dissatisfaction at present with the state of Law as to the Age of Consent as contained in the Secs. 375 and 376, I. P. C.

2. The country is generally progressing in social reform by means of education and association with other societies, so in my humble opinion some advance regarding the Age of Consent should be made in the present law first fixing the minimum age of marriage. If the minimum age limit be fixed as done in some native state a great deal of difficulty regarding Age of Consent would be removed. The minimum age of marriage in case of girls should be fixed at 14 and not less than that.

3. The crimes of seduction or rape are not frequent in this part of the country. The amendment of Law made in 1925, raising the Age of Consent to 14 years, did not succeed in preventing or reducing the case of rape outside the marital state or the improper seduction of girls for immoral purposes. If the age outside marital state be raised to 16 such offences will gradually die out.

4. The amendment of 1925, raising the Age of Consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with husband within the prescribed age limit by the means stated in the question; generally cohabitation takes place between husband and wife just after the wife attains puberty which generally occurs in this country from 12 to 14 years of age. This can only be made effective fixing the age limit of the marriage of girls to 14 years.

5. The usual age of attaining puberty in this part of the country is 12 to 14 years; this differs slightly in different castes, communities or classes of society according to their status and mode of living; in labouring classes the puberty is attained later than educated classes and those who live in luxury.

6. The cohabitation is not common in this part of this country among any class of the people before puberty. But there is a custom amongst Hindus about consummation of marriage soon after puberty even before the girl completes 13 years. No such case has come to Court to my knowledge.

7. There is a religious injunction amongst Hindus that the marriage should be consummated just within 16 days from the date of wife attaining puberty but not before; such injunctions are found in the Shastras of Hindus; the penalty is Eternal damnation of dead fore-fathers.

8. Garbhadan ceremony is usually performed in this part of the country. It is generally performed within 16 days from the first attainment of puberty of the wife and after the ceremony the consummation follows. The ceremony is generally performed after puberty within 16 days.

9. The attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage as puberty in some cases is attained even at the age of 12. The girls apparently in this hot country attain their full growth at the age of 14 or 15. If the marriage takes place at 14 and if the wife be not sickly and unfit for consummation owing to some disease and if there be sufficient physical development of body the condition is healthy; consummation may take place in my opinion, without injury to her own health and that of her progeny as the child cannot be born before 15 or 16 years of age at the latest.

10. At the age of 16 years a girl in India may be competent to give intelligent consent to cohabitation with a due realisation of consequences as the girls generally get power of mature understanding at such age.

11. No.

12. Yes. Early consummation and early maternity are mainly responsible for high maternal and infantile mortality.

13. If the marital age be raised to 14 and extra-marital to 16 I think there would be no objection amongst educated and higher classes, as those classes generally at present do not give their girls in marriage before 14 years of age and the lower and uneducated people will follow them if there be an age limit of marriage at 14 years.

14. Yes. But the tendency is gradually disappearing.

15. Determination of age rests on doctor's opinion and they differ very often.

16. Yes.

17. Yes. The punishment prescribed in Sec. 376 may be retained for extra-marital offence but for marital offence punishment may be reduced to 6 months or fine not to such as suggested in amendment Sec. 376A.

18. Yes. There should be difference in the procedure of trials within and without the marital state. All trials should be held by Jury or Assessors. In cases of marital offence the trial should be in Camera and in case of outside marital state the trial may be in open Court as done now. If all these trials be held by Jury or Assessors they will explain the law to the fellow villagers and the opinion will be gradually educated.

19. Such offences should be enquired into by the Magistrate for safeguarding such corruptions and not by Police Officers.

20. The Legislation fixing the minimum age of marriage will be more effective than Penal Legislation fixing a higher Age of Consent for marital cases. The former one would be in consonance with public opinion in this part of the country.

21. To secure the object in view the Penal Legislation as well as the progress of social reforms by education and social propaganda is necessary.

**Written Statement, dated the 14th August 1928, of His Holiness Sri Sri GARAMURIYA GOSWAMI, Garamur Satra, P. O. Kamalabari (Sibsagar).**

1. In reply to the Questions 3 and 4, here I like to say that the amendment made in the year 1925 raising the Age of Consent to 14 years in preventing early marriage is not totally effective in my country as 90 per cent. of my countrymen have not been informed of what is the amendment. Moreover the Government also has not taken any steps to spread the bill among the people. In spite of this amendment the cases of seduction and rape have been continuing as it was before. Of course in some elevated places though these cases are frequently postponed, it is not due to the amendment of 1925, but for the education spread among the abovementioned societies.

In my opinion if the Committee or Government wished to make the Law effective it is proper for them to form a committee of educated persons (containing seven to ten in each sub-division) with respective power, and the committee should see whether the law is carried by the people or not.

2. In reply to the Question 9, here I like to say that the girl just after attaining her puberty is not fit for marriage. A girl becomes fit for marriage and for physical development 3 years after her attaining puberty. And by that time the girl reaches the age of 15 or 16 and becomes fit for progeny.

3. In reply to the Question 12 the early maternity is chiefly responsible for high maternal and infantile mortality, because it soaks the progress of intellectual and physical culture of the people.

4. Here in conclusion I, as a preceptor of Assam as well as well wisher of the Government, wish to advise the Committee of the Age of Consent Bill, that the Sections 375 and 376, I. P. C., being forced for the stoppage of the early marriage are supported heartily by me. But in consideration of social and mental culture of the people of the country it is simply valueless to pass such laws among the people. Generally the people of the country 90 per cent. are uneducated. They do not understand what is law. Moreover the people at present are greatly being pressed both by pecuniary and social problems. In my opinion in such a state it should not be proper for the Government to pass such laws which will rather create dissatisfaction between the Government and the people.

Therefore I request the Government to mobilize all the strength and energies towards education leaving aside this sort of impracticable laws.

**Written Statement, dated the 6th August 1928, of Rai Bahadur BIPIN CHANDRA DEB LASKAR, Mouzadar and Honorary Magistrate, Lakhimpur, Cachar.**

1. There is no dissatisfaction with the present age of consent as contained in Secs. 375 and 376, I. P. C.

2. According to the Hindu Shastras the father or the guardians of the girl are bound to give their girls in marriage on or before 10 years; of course I shall not be able to cite the authority of the Shashtra which can be cited by a

pandit. If any change is made it may create dissatisfaction among the orthodox Hindus. The Shashtra is going to be relaxed by the influence of the time. So I do not see any necessity to relax it by enforcing law.

3. There are very few or no seduction or rape cases in the district of Cachar.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with their husbands within the prescribed age limits as it has not postponed the consummation of marriage or it has not stimulated public opinion in that direction or it has not put off marriage beyond 13. To make this amendment effective if the law is enforced public dissatisfaction will arise among the Hindus as well as the other castes.

5. The usual age of attaining puberty among the girls of this part of the country is 12 to 13 years. This age generally does not differ among the different castes, communities, or classes of societies of this district.

6. Cohabitation among the lower classes of people in this district is common before puberty but no cases come to the court.

7. The practice of early consummation of marriage before puberty is due to religious injunction of the Hindu Shastras (the authority can be cited by a pandit). If a Hindu married girl attains puberty even before 13, and the Garbhadan ceremony is not performed within 16 days, the girl will remain unclean and nobody will take food touched by her and the girl will not be allowed to eat fish or meat or she will have to undergo prayaschitta.

8. Garbhadan ceremony is performed in Cachar among the Hindus and it coincides with the consummation of marriage. It is generally performed after the attainment of puberty within 16 days and after 10 days.

9. Attainment of puberty under natural course is sufficient indicative of physical maturity which justify consummation of marriage.

10. An Indian girl of 13 is quite competent to give intelligent consent to cohabitation with a due realisation of consequences.

11. Nil.

13. Generally the public do not know even the Age of Consent as amended in 1925.

14. We men of this part of the country are in favour of early consummation of marriage for their children.

21. I prefer to rely, not on the strengthening of the penal law to secure the object in view, but on the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 6th August 1928, of Mr. HAMANTA KUMAR HALDAR, Sub-Judge, Sylhet.**

1. There is dissatisfaction with the law as it stands embodied in the second exception to Sec. 375, and in the portion within brackets in Sec. 376, I. P. C., and corresponding portion in Schedule II of the C. P. C., 1898.

2. The circumstances are:—To make prosecution possible only when the girl concerned or her near relatives or failing that any well-known philanthropic society is the complainant, and to exclude strictly all police interference in the matter, police not being authorised to do anything except under orders of Court.

3. Such crimes are frequent in my part of the country. The amendment of the law, made in 1925, has not succeeded in preventing or reducing the crime. The law cannot be made effective, except by raising the moral tone of the people by proper education.

4. The amendment has not and cannot be effective. The only way is to educate the people with moral and religious instructions.

5. The age varies from 11 to 14 years, in normal conditions. There is difference only in town girls and village girls, the former generally attaining puberty earlier than the latter.

6. There is no distinction of class of people in this matter. I know of no such case ever coming to Court.

7. I attribute the practice of early consummation of marriage (not before), at puberty to religious injunction. The injunction with penalty for its breach is the Manu Smriti couplet “\* \* \* \* \*” (Something written in Bengali language) that is, whoever being in good health, does not go into his wife when she has taken a bath after menstruation, he is undoubtedly guilty of the sin of killing a cow-calf”.

8. “Garbhadan” ceremony is usually performed in our part of the country, and is performed 16 days after the attainment of puberty or as soon after it is possible.

9. I think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. To give intelligent consent with due realization of consequences, a girl must have sufficient education of the proper sort and age has nothing to do with it.

11. I never came across any such case.

12. I do not consider early maternity *by itself* responsible for high maternal or infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people.

13. There has been no further development of public opinion in my part of the country in the matter. In fact, the amendment is never thought of by the people. Its existence is known only to the lawyers in a general way, and that is all.

14. Women in our part of the country do not favour or oppose early consummation of marriage for their children. They are generally indifferent in this matter.

15. Difficulties are sure to be experienced in determining the age of girls in connection with the offence of rape. I can suggest no measures to remove or minimise these difficulties.

16. I do not think that the difficulty may be reduced or minimised by raising the Age of Consent to 14 years or more.

17. Extra-marital and marital offences are in their nature quite different, and so these should be separated from each other. Punishment for extra-marital offences may remain as it is or may be made a little heavier. As for marital offences, the punishment should be fine only and that varying according to the pecuniary circumstances of the offender.

18. Procedure of trials of extra-marital offences may remain as it is. That for marital offences should be initiation of proceedings by complaint to a first-class Magistrate by the girl herself or her near relation or a well-recognised philanthropic society, the police having nothing to do in the matter except carrying out orders of the Court.

19. Safeguards have been suggested above in answers to Questions No. 18 and 2.

20. Minimum age of marriage should not be fixed by law in any circumstances. Fixing of higher Age of Consent is also bad in an equal degree. Neither of these would be effective and public opinion in my part of the country is against both the alternatives.

21. I prefer progress of social reform by means of education and social propaganda to formulating and far more to strengthening of the penal law in such matters.



**Written Statement, dated the 8th August 1928, of Khan Bahadur  
HAJI MUHAMMAD BAKTH MAJUMDAR, M.L.C., Sylhet.**

1. To my knowledge there is no dissatisfaction existing with the staff of the law as to the Age of Consent and I do not think any change of the same is warranted by any special circumstance in this part of the country.

2. I am strongly of opinion that the law as it is should not be changed. The public opinion in this part of the country do not make any such demand and offences are by no means common to justify a change. It is not right in my opinion for any legislative body to pass a law for which no demand exists and the proposed amendments to the I. P. C., should, if made, be applied only in those areas and amongst those people who ask for it. The educated minority should not assume the right to enforce their ideas on the people at large and disturb the social custom as they are existing in India for long ages.

9. Most certainly—I have not known of any case where consummation of marriage first after attainment of puberty may be attributed as by no means a conclusive proof either of any disease or premature death or physical deterioration of progeny. The attainment of puberty is undoubtedly an indication given by nature that the person is fit for marital life. Any legislative measure postponing consummation of marriage after attainment of puberty will, I am afraid, lead to increase of immorality in society and will give excuse to the public to cause unnecessary harassment.

10. In my opinion 13 or the age when a girl attains puberty.

11. In my experience I have not come across any such case and am of opinion that cohabitation after attainment of puberty cannot possibly lead to any injury to health, etc. I agree that before puberty cohabitation should be made penal.

12. My answers above will show that I hold that consummation of marriage even just after the attainment of puberty cannot possibly result in affecting intellectual or physical progress of the people. High maternal or infantile mortality wherever exists may be traced to ignorance of hygienic laws rather than to early consummation of marriages.

13. No advance at all—on the contrary this movement to increase the Age of Consent is considered foolish as it goes counter to the religious laws on the subject.

14. Yes, after the attainment of puberty mothers show very great concern about their daughters' marriage soon after they attain puberty.

17. If the Age of Consent be fixed at the attainment of puberty it would be artificial to make a distinction between sexual intercourse in marital or extra-marital life as long as the same be with the consent of the girl. When nature makes one fit to enter into sexual relation, any restriction imposed by legislative measure results merely in breaches and hampers the choice of mates between opposite sexes. It would be an encroachment on personal liberty if legislation undertake to fix an artificial age when people should enter into marital relation, even when they are fit to do so by natural growth.

19. The safeguard I would suggest would be against any possibility of unnecessary harassment by the police. No cognisance of any offence in this respect should be taken unless a formal complaint is lodged by the parent or guardian of the girl and that too only in extra-marital relation.

20. If legislation is to be taken at all, fixing a minimum age of marriage would be better. Attainment of puberty should in my opinion synchronise with the Age of Consent. But any legislation fixing a minimum age for legality of marriage would be a serious encroachment on Shariat.

21. Education and social propaganda would certainly be resorted to as means for awakening a public sense in this respect. Legislative measures for correcting any social custom prevailing for long ages are abhorrent to Indian

sentiment. Religious laws should not be tampered with and might lead, if changed to legislation, to serious consequences.

My above opinion may be taken for what they are worth and I may note that I do not feel inclined to give any oral evidence. I consider the proposal to legislate on the subject as ill-advised and anti-religious.

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**Written Statement of Babu DEBI CHARAN RAY, M.A., Senior  
Extra Assistant Commissioner, Silchar (Cachar).**

1. There is no dissatisfaction with the state of the law as to the Age of Consent as contained in Secs. 375 and 376, I. P. C. But the opinion of the educated community other than the orthodox is that the age should be raised.

2. I am in favour of making an advance on the present law. A girl of fourteen does not possess mature understanding so as to give free consent. In the case of unmarried girls the age should be raised to 16 and in the case of the married girls it should be raised to 14 so that there should not be cohabitation immediately after the attainment of puberty, *vide* answer to Question 9. Girls who give birth to children from the early age become emaciated and die soon. Their children also become weak. I think the present law is not sufficient. The age should be raised to 16.

3. Crimes of seduction or rape are not frequent in this part of the country. But there are cases. But all cases do not come to court. Among the Manipuris who form a considerable portion of the district of Cachar, there is a custom though not legally recognised to elope with the bride before marriage and then to get consent of the parents. There are cases of abduction among them. It is also believed that among lower castes and coolie population of the district there are cases of seduction. But these cases do not come to court. The amendment of the law made in 1925, has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I think the present law is not sufficient. The age should be raised to 16.

4. (1—3) No. The only effective measures is that marriage below 14 should be prohibited. I believe that cohabitation takes place between a husband and his wife whose age is less than 13. But there is none to prosecute.

5. Ordinarily, girls attain puberty at the age between 12 and 13 years. I am told that girls below 12 sometimes attain puberty. It does not differ in different castes, communities or classes of society.

6. Cohabitation takes place before puberty as girls are married before 12 among the lower castes such as Patnis and Naths. Among educated classes marriageable age has been raised owing to dearth of suitable bridegrooms and owing to public opinion. But even among them cohabitation takes place before the girls attain puberty in case her marriage takes place before she attains puberty. None of these cases come to court.

7. I do not attribute the practice of early consummation of marriage before puberty to religious injunction.

8. Garbhadan ceremony is usually performed among the Hindus in this part of the country. Consummation of marriage takes place as soon as the couple are married. But among the higher classes puberty is attained before marriage generally.

9. Attainment of puberty is not always sufficient indication of physical maturity to justify consummation of marriage. I consulted Major J. L. Sen, Civil Surgeon, who is of opinion that 16 is the minimum age or 3 years after puberty at which a girl's physical development may be considered to be enough to justify consummation of marriage without injury to her own health and that of her progeny. He instanced a case in which a husband had cohabitation with a girl of 12 after she attained puberty. It caused great

rupture to the genital and produced profuse bleeding and it took 14 hours to stop that bleeding.

10. In my opinion a girl of 18 years and not less would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. *Vide* the example given under Question No. 9.

12. I consulted Major Sen, Civil Surgeon, who is emphatically of opinion that early consummation and early maternity are responsible for high maternal and infantile mortality. I am also of the same opinion.

13. No.

14. No women favour early consummation of marriage for their children.

15. I had no occasion to try a case under Secs. 375 and 376, I. P. C. But as a Judicial Officer I find that no doctor can definitely give opinion as to age. The Civil Surgeon Major Sen is of the same opinion. The only exact method of determining age is by X-Ray examination of the bone.

16. No, unless it is raised to 16.

17. I would separate extra-marital and marital offences into different offences. I would propose punishment as proposed in Sec. 376-A for marital offences. I would retain the same punishment for extra-marital offences as is now prescribed.

18. It is a general opinion that marital offences should be tried in *camera*. Extra-marital offences may be tried as now.

19. I think there should be provision for punishing abettors.

20. I do not consider that penal legislation fixing a higher Age of Consent to be more effective than legislation fixing the minimum age of marriage. Educated public opinion will favour fixing the minimum age of marriage.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view. *Sati* would not have been suppressed if there was no penal law.

**Written Statement, dated the 8th August 1928, of Rai Sahib K. C. DAS, late Assistant Secretary to the Government of Bihar and Orissa, Department of Education, Agriculture and Industry, Behell, P. O. Sachna, Sylhet.**

*Proposed legislation for changing the 'Age of Consent' as incorporated in Sections 375 and 376 of the Indian Penal Code.*

The Government of Assam have sent to me a copy of letter No. 42-A. C. C., dated the 20th July 1928, from the Secretary, Age of Consent Committee, sending a set of questions on the desirability of modification of the 'Age of Consent' as embodied in Sections 375 and 376 of the Indian Penal Code. I am glad to have an opportunity to express my views on a social question like this which is eating into the vitals of the Indian society. "Maitryism", as was popularly called the vice at the time which led to the framing of the Age of Consent Bill in 1890-91 and its final passing as a legislative enactment, is still prevalent, concealed and undetected though it continues to remain. At that time I was reading in the College at Calcutta, and the sky was rent with the cry that the Hindu religion was in danger. The Bill was passed into law and no danger has overtaken the Hindu religion. Even in 1925 an upward change in the Age of Consent was introduced and the Hindu social structure has not fallen to pieces. If now greater changes came into operation, they would not only not worsen the position but would materially improve the lot of a very large proportion of the miserable women and children of India. So far as I and those of my way of thinking can see, it is necessary that the remedy should be applied higher up. Inspite of the cry that religion is in danger, the economic pressure upon the people

is bringing about a much desired reform in the marital age of girls; now-a-days the girls grow up to the age of 15 to 16 in many cases and to the age of 17 to 18 years in some cases before marriage. Therefore hardly any valid objection can be raised against levelling up by law the age of marriage to 15 years at least. Before the Bill is passed into law, there will be much cry; but as soon as it is passed, all agitation will cease. Such a law will have the effect of removing the necessary evil of attempt at consummation of marriage in immature age. With these preliminary remarks I proceed to answer the queries as they occur in the questionnaire.

1. Here the people at large are not vocal and no organised efforts are made to sound them on any question; but everybody realises the evils of the existing conditions without caring to know what the law is on the subject or whether any remedy can be had by amending any law.

2. I think sufficient grounds exist to justify an advance on the present law. The present age of consent, so far as marital conditions are concerned, is a meaningless dead letter. The wife is forced to consummate marriage before the proper time and silently suffers a lifelong agony; her haggard and emaciated look, her puerperal condition, burning sensation in the head, hands and feet, frequent looseness of bowels and discharges bear testimony to the heasty treatment by the husband. Then the emaciated and weak off-springs begotten of a pair of weaklings bear fresh witness to sexual intercourse in immature age. The present law is ineffectual in checking this, for neither the girl nor her relatives would disclose all these sufferings. Moreover, to my mind the present law prescribes an impossible injunction which cannot but be honoured in the breach. If a doctor provides a dainty dish by the side of a patient and strictly enjoins upon him not to touch it, it can well be imagined what use the patient will make of the dish. Our Hindu Shastras and custom prohibit consummation of the marriage before the girl attains puberty. But the restraint is cast to the winds and the girl must sleep with her husband whether the girl or the elders of the household will it or not. In an unnatural way development is forced and this condition is visible even to a casual observer. Among the prostitutes these wretched looking girls are not wanting.

3. The crimes of seduction or rape, outside marital life, though not too frequent, are not rare in our part of the country. The amendment of the law made in 1925, raising the age of consent to 14 years, has no practical value in checking abuses of it outside marital state, or preventing improper seduction of girls for immoral purposes. The age limit should be considerably raised, but this in itself will not be sufficient to check the seducers or procurers. Prevention is better than cure. Safeguards should be provided for the prevention of such crimes. The village authorities should be authorised to take initiative measures under the law to prevent such crimes in their surroundings.

4. No; nothing, as will be seen from what has been stated above. For the marital state the age of marriage should be fixed at 15 years at least, preferably at 16; and for covering other cases not only the age should be raised to 16 years, but at the same time powers of arrest should be vested in the village authorities.

5. No definite age can be laid down as the limit at which girls attain puberty in our part of the country. This depends upon various considerations. National growth of a healthy girl, an off-spring of healthy parents, will convey her to development and puberty earlier than another of stunted growth. The environments of the girl are the second factor; if a family is pure in thought, words and action, the low thoughts of marriage, marital connection, etc., do not find a place in the girl, and this is a preventive against early puberty. The girls in the families of educated people may be stout, strong and healthy, but necessarily this is not followed by early puberty, because the marriage questions, marital conditions, etc., are not talked of in their presence and they are not encouraged to engage themselves in such thoughts. In the poor and low class people, who are not

ashamed to talk in the presence of unmarried girls in language which promotes immoral thoughts and ideas and who sleep in one room and even in one bed with their girls, early development is forced upon the latter. The age of puberty ordinarily ranges from 12 to 15, or even 16 years. A girl of 12 or 13 years will not usually attain puberty unless married and this will be an instance of forced puberty.

6. Yes, to all the three sub-queries. No, generally these cases do not come to court, and the reasons have been stated above.

7. To attribute to Shastric injunction early consummation of marriage before or at puberty, wherever it may exist, is nothing but hypocritical. Anybody trying to bring forward any Shastric injunctions in favour of such consummation, will soon be found out and exposed.

8. 'Garbhadan' ceremony is invariably performed in our part of the country as soon as the girl shows signs of reaching womanhood, i.e., after the first monthly course has run out. This ceremony is meaningless in the majority of cases, as the consummation takes place before and it is followed by puberty and the so-called 'Garbhadan'. Yet there are innumerable cases among the 'bhadralog' where puberty is attained before marriage. Here the Shastras enjoin that if a girl is not married before the first signs of puberty appear, the dead ancestors drink the blood coming out as menses; an 'Prayaschit' is prescribed for such a crime. But necessity knows no law; and who cares for the Shastric injunction and performs 'Prayaschit'? But if it is proposed to raise the age of marriage, this very injunction will be trotted against the proposal and a hue and cry of 'religion in danger' will rend the sky—such hypocrits we have become!

9. I do not consider that in all cases the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage. As this varies in different cases and as it is an indeterminate factor, a sufficiently high limit of age should be fixed for the consummation of marriage or rather for the marriage itself, both for the good of the girl herself and her progeny as well as for the good of her husband.

10. Before the age of 16 years a girl in India cannot be considered as intellectually competent to give an intelligent consent to co-habitation with a due realization of consequences.

11. I am not a medical man and have not had occasion to see or examine injuries due to cohabitation, but have seen many women with visible signs in the appearance and diseases of forced cohabitation before or after puberty but before full physical development. But the bodily health of these women and their off-springs is gone for ever.

12. Yes, I am decidedly of the opinion that early consummation and early maternity are responsible for high maternal and infantile mortality. These also seriously affect the intellectual and physical development of the people.

13. Nothing appreciable, but everybody in the intelligent and educated classes realizes the necessity of an extension of the Age of Consent in marital and extra-marital cases.

14. No, our women are very reluctant to send their married sons and daughters to live with their wives and sons-in-law before attaining maturity of age, except certain doting women who desire to see the face of grandchildren as soon as possible.

15. Medical opinion is very uncertain in this respect. I am afraid that there is at present no love and unerring method to test the age. The case of Padamkumari is an instance in point. I think the courts should have discretionary power to accept or reject medical advice and to be guided by his own discretion or advice of the jury or by both, his own opinion with reasons prevailing. I have seen some cases failing owing to this age muddle.

16. Yes, to a certain extent, if raised above 14 years.

17. Yes, I would separate the extra-marital and marital offences into two different groups. If the age of marriage is laid down and pitched to a

high level, marital offences will go out of the Code, but separate offences will have to be created for crimes committed by these responsible for marrying girls of age below the prescribed limit. The punishments should be as deterrent as possible, though I have very little faith in such deterrent measures.

20. I am of opinion that legislation should fix the minimum age of marriage. This will overcome the unenviable situation in which a husband is placed, whatever may be the age of consent—the higher it is pitched the greater will be the difficulty imposed upon the husband. You place a dainty dish by his side and ask him not to partake of it. Even the Gods would not be able to resist the temptation.

21. To depend upon the progress of social reform by means of education and social propaganda, will mean waiting till the Greek Kalends. Legislation should open the eyes of the blind and show them the way. So far as I can see, as India progresses on the path of self-government, all measures of social reform will have to be shaped on the legislative anvil by the votes of the elected representatives of the people.

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### Written Statement of Rai Bahadur NAGENDRA NATH CHOWDHRY, Zemindar, Sylhet.

*Introduction.*—I am a Zamindar and a Tea proprietor and was a member of the Indian Legislative Assembly and of the Assam Legislative Council. I am an ex-Chairman of the Sylhet Municipality and of the North Sylhet Local Board. I am a Bengali Hindu and a Brahmin; but without that blind orthodoxy which considers all *shastric* injunctions to be inflexible and stoutly opposes social reforms with the help of legislation. If Manu and Jagyabalka could legislate for Hindu society and if Raghunandan could effect revolutionary changes in rituals, prescribed by the *smritis*, for Bengal, I do not see any objection to Sir Hari Singh Gour or Rai Saheb Harbilas Sarda obtaining statutes passed by legislatures, composed of Indians, for eradicating evils that are admitted to be existent in the Indian societies. The difference that the Government is in the hands of an alien race should not be taken into account in such matters. There is no religious institution in India at present whose ordinances would be binding on societies to suit altered conditions of the time; and as such I would not be against enactments throughout legislatures, with a clear majority of the Indians, to legislate in social and religious matters. On principle, I advocate Sir Hari Singh Gour's bill for the proposed amendment of the I. P. C., though I will differ with him in a small detail as will appear from my answers given below:—

1. There is no articulate opinion against the provision of law as to the "Age of Consent" as contained in Sections 375 and 376 of the I. P. C., in this part of the country; but the child marriage, as an institution, is condemned by the Hindu society and every where there is a demand for protecting minor girls from contamination, by raising the Age of Consent both within and outside marital relations. Though there is an opinion which desires no change in Section 375 or 376, so soon after their alterations in 1925, on the ground that it is likely to remain a dead letter owing to the difficulty of ascertaining the exact age of the girl or by creating a confusion in the public mind, I am strongly of opinion that Sir Hari Singh Gour's original intention, as expressed in the bill, should be given effect to. He wanted to raise the Age of Consent outside marital relations from 14 to 16 and to make a new offence of marital intercourse where the wife is above 13 and below 14 years of age. It was only through a move on the part of the late Sir A. Muddiman, the then Home Member of the Government of India, that a middle course was run and the law stood as it was enacted by Act XIX of 1925. I, therefore, see no reason why Sir H. Gour's present bill should be passed into law as it is not in advance of his original intention.

2. My note on point 1 covers answers to the points, whether the present law of the Age of Consent should be retained or an advance should be made. It appears that the proposed law creates a new offence of marital intercourse where the wife is above 13 and below 14 years of age and a new Section 376A is proposed to be introduced. I am in favour of having 376A introduced into the law though in this case the punishment might be lighter as a mere imposition of fine would meet the ends of the cases in view. In the present state of our society we have not yet fully outgrown the custom of marrying girls before 12 or even before signs of puberty manifest itself or as soon as the girl begins to have her monthly course. In such cases cohabitation may not always be possible to be prevented; and even if such an instance be declared an offence the punishment should not be imprisonment. Though it is argued that no useful purpose in such cases would be served by legislation owing to the fact that such crimes would be incapable of detection, the mere existence of a provision in the law would serve as a deterrent against immature connection between a man and a wife and would indirectly effect a social reform by making marriages of girls under 14 years of age a thing of the past. This may be legislation in advance of social reform; but I am an advocate of it all the same.

3. Crimes of seduction or rape are not infrequent in Bengal and Assam; and these very often take place outside marital relations. Instances will be furnished if I am called upon to give evidence orally before the committee. The amendment of the law, made in 1925 raising the Age of Consent to 14 years, has had no effect in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I would, therefore, favour raising of the Age of Consent in such case to 16 from 14, as proposed. I am inclined to raise the Age of Consent even to a higher age, say 25, to stop clopements of women by *goondas*—an evil common in this part of the country. It may present some difficulty in case of cohabitation with prostitutes whose solicitations would be responsible for offences under this head as in this case there would not be opportunity enough for the man to ascertain the age of the woman. Though in a case like this the offence would not be “rape” in strict technical sense of the law, yet such offences, when not committed in relation to women leading the life of ill-fame, should be punished with exemplary severity. And, for the present, if the legislation wishes, the age limit of consent in non-marital connections might be 16, as proposed by Sir H. Gour in amendment of clause 5 of Section 375. Consent in non-marital cases even above 16 are not often obtained by force, coercion, inducement, etc., and for such persons to escape punishment would be unjustifiable.

4. The amendment of 1925, raising Age of Consent within the marital state to 13 years, has been effective in putting off marriage of girls at least among the literate section of the society and has, therefore, made consummation of marriage below that age an impossibility. To my mind, such a provision in the law, if it be known to the illiterate section, will stimulate public opinion in favour of postponing consummation even if the marriage had taken place before that age. As I have already remarked, enactment in this direction may not directly influence conduct, but will indirectly effect a much-needed social reform. I do not think any other step is desirable.

5. The age, at which girls in our part of the country attain puberty, is generally 12 which is an age somewhat in advance of what obtains in other countries. Early menstruation and puberty may be common in India; but, so far as I am aware of circumstances in this part of the country, it does not make marrying of the girls at that stage imperative in spite of *shastric* injunctions to that effect. Even the orthodox among the Hindus belonging to the literate classes, cannot now give their daughters in marriage before 14 owing to difficulties arising from obtaining suitable bridegrooms and other economic circumstances. In lower classes of the society and among the Muhammadans, so far as I know, child marriage is not infrequent. Among the Muhammadans the attainment of puberty and men-

struation is earlier than among the Hindus owing to the peculiar food and habits of life of the former stimulating the development of sexual functions earlier in that community. It is inimical to health and vigour and cases of child mortality, I think, is greater among the Muhammadans.

6. Details about cohabitation, before puberty, or soon after it, or before the girl completes 13 years, are difficult to obtain. My impression is that this is not common among the Hindus whose girls are at present seldom given away in marriage before 14. Owing to social customs among the Hindus, free mixing of girls and boys before marriage is not common, as among other communities. Prohibited degrees for marriage among the Hindus are many more than among other communities and as such no boy or girl can think of free communion or mixing with any one. I am not aware of any cases coming into court, so far as Hindus are concerned, under circumstances detailed in para. 6.

7. There is a religious instruction (and not injunction) among the Hindus which describes the age of puberty only by reference to first menstruation. Consummation of marriage before puberty as it is understood by the Hindus, namely, first monthly course, is unthinkable. It is only after Garbhadan ceremony has been performed that the husband and wife are allowed to share the same bed. Now that the age of marriage is gradually going to be deferred to ages beyond 13 no religious instruction can now be said to be observed among the Hindus. Whatever injunction on the point existed in the Shastras is now a dead letter; and so far as I am aware the authority prescribing that injunction does not prescribe any penalty, at least in this life, for its breach. It may be a sin but not an offence punishable by any mundane authority.

8. Garbhadan ceremony used usually to be performed in our part of the country, but now it is going to be abolished except among the orthodox section of the Brahmins. It is always anterior to the first consummation of marriage and is performed on the 16th day after the attainment of puberty, in the sense of after first menstruation of a girl after marriage.

9. Attainment of puberty, that is to say first menstruation, in the Hindu sense is not a sufficient indicative of physical maturity to justify consummation. Its attainment before marriage may be due to various causes; but in my opinion puberty, that is to say menstruation, at 14 or after that age indicates such physical development in a girl that would justify consummation without injury to her own health and that of her progeny.

In India, girls would be competent to give an intelligent consent to cohabitation with proper understanding of its consequences at the age of 14.

11. I have no experience as I do not belong to any profession either legal or medical to come across cases contemplated under this head.

12. I am strongly of opinion that immature consummation and early maternity are responsible for high maternal and infantile mortality and for results vitally affecting the intellectual and physical progress of the people.

13. Though there has not been any articulate public opinion since the amendment of law in 1925, in favour of an extension of the Age of Consent in marital cases, need for raising it in extra-marital cases has arisen in the meantime owing to elopement of girls from the Hindu society by *Goonidas*.

14. No.

15. I am not in a position to say if any difficulties have been experienced by courts, lawyers, doctors and police in determining ages of girls in cases under Sections 375 and 376, I. P. C., but I strongly desire some means to be devised for accuracy in this direction and would suggest better and stricter methods of birth registration.

16. As I am strongly in favour of raising the Age of Consent to 14, it is immaterial whether there is any difficulty or margin of error between the ages of 13 and 14.



17. I have already dealt with it in paras. 1 and 2 and would prescribe the maximum amount of punishment in marital offences under proposed Section 376A to a fine only, leaving the punishments under the offence of "rape" to what exist now.

18. I would like to have a difference in the procedure of the trial of offences within and without marital state and would strongly insist upon the former (marital cases) being conducted *in camera* and without the interference of a police investigation as laid down in the Cr. P. C., I would not make it either a police cognizable case.

19. I do not share the view of those who fight shy of legislation because there may be collusive and improper and false prosecution or extortion if such offences were dealt with by enactment. Mischief-mongers will not be wanting in society; but that is no reason why law should not exist for the punishment of the real offender. My idea is that improper prosecution or false prosecution and extortion will be met by the existing provision of the law in Sections 182 and 211, etc., of the I. P. C., and I do not see what other safeguards are possible against the abuses contemplated under this head. It will have to be left with the society whose members I do not consider to be so very mischievous and designing as to concoct cases like these for illegal gains. At least this would not be possible in Hindu society whose sanctity is not so lightly violated. It must be left to the good sense and the discipline of the society which is gradually developing with a true sense of duty.

20. I consider penal legislation fixing higher Age of Consent as effective as the fixing of the minimum age of marriage. Both are equally necessary. I would welcome both Sir H. S. Gour with his Child Protection Bill and Rai Sahib Haribilas Sarda with his Child Marriage Bill, between themselves, eradicating the evils that are eating into the vitals of our society and both. I venture to say, will be in consonance with public opinion in my part of the country.

21. I have already said that I am not opposed to legislation in advance of social reforms and would favour the operations of both. Even if the penal law be existent the object in view may be secured by social reform with the progress of education and by means of social propaganda inasmuch as the penal law may be left to exercise its indirect influence upon the society for true reforms.

### **Written Statement, dated the 10th August 1928, of Sri Sri ADHIKAR GOSWAMI of Dakhinpat Satra.**

1. This Satra (A Religious Institution) which has to decide cases of sexual intercourse between different castes (as it entails "Prayaschitta") has never come across with cases of rape amongst the Assamese people, though it will be hard to tell that it is altogether unknown. For this, judicial records of the Assam Government will give authentic information. It can be safely said that social morality of the Hindus in this part of the country is deadly against sexual intercourse without consent.

2. There are apparent cases of seduction which are practically elopement. But with new immigration of people from outside the province, the case is being committed now and then specially in the Nowgong District where there has been recent influx of immigrants from Mymensing and other parts of Bengal.

3. The Age of Consent may be raised to sixteen in cases of unmarried girls as that will give them sufficient discretion to consent or to disagree.

4. It is difficult to state, but in Assam the age of puberty is somewhere near 14 years, and even the Brahmins who marry in Assam before puberty, never allow their daughters to go to their husband's house before attainment of puberty or to be precise about six months after attainment of that

age, though there may be rare cases where the husband takes his wife immediately after the marriage. This specially is the case where a Brahmin widower marries a second time on the plea of looking after his first wife's children.

I shall be for stimulating public opinion in that direction for Brahmins (in Assam) and for others (as in Assam) postponing the consummation of marriage beyond sixteen amongst the people (except Brahmins) as the custom here is to marry generally at the age of sixteen or thereabout.

5. About 13 amongst Brahmins and 14-15 amongst other castes in Assam.

6. (i) No.

(ii) Yes, amongst Brahmins.

(iii) Very rarely. I know of none.

7. I attribute the practice of early consummation of marriage before puberty amongst Brahmins to religious injunctions and I don't find any way out at present.

I give below the authority and the punishment for ready reference:—

যথা মহাভারতে

অতোহ প্রবৃত্তেরকসি কস্তান্দদ্যাংপিতাসকুং ।

সহদেনঃ স্পৃশেদেন মন্তথৈষা বিধিঃ সতাং ॥

অত্রি কাশ্যপৌ ।

পিতুর্গেহেতু যা কস্তা রক্তঃ পশ্চে দসংস্কৃত্য ।

ব্রণহত্যা পিতুঃ তস্তাঃ সা কস্তা বুঘলীশ্বত্যা ॥

যশ্বতাং বরয়েৎ কস্তাং ব্রাহ্মণোজ্ঞানদুর্দলঃ ।

অশ্রাদ্ধেয় মপাভ্যস্তেয়ং তংবিদ্যাদ্ বুলী পতিং ॥

ইত্যাदि

8. The custom is not known here.

9. I am not competent to give any opinion as this is a celebrate institution.

10. At about 16 years.

11—12. We are not competent to give any opinion on this.

13. Yes, there has been a change amongst the Brahmins.

14. Yes. The Brahmins desire the girls to be married before puberty, but they don't wish their sons to get married before they are established and properly educated.

15. I have no experience of this.

16. Cannot say.

17. Yes, there should be a difference, the punishment should be prescribed by lawyers of experience.

18. See above.

19. I cannot say either way as we have no experience in these matters.

20. I am in favour of raising the age of cohabitation and cannot support the age of marriage against Shastric injunctions for Brahmins.

21. By propaganda, etc.

**Written Statement, dated the 11th August 1928, of Mr. J. N. DAS,  
Falsala Navis, Extra Assistant Commissioner, P. O. Gauhati,  
Assam.**

1. Yes. There is. As offences under Section 376 are more common here amongst low classes and depressed communities and the girls of these people attain puberty between 14 and 15 years of age and not unusually at 16 years, so penal legislation raising the age of consent is necessary.
2. I am not in favour of retaining the law of the age of consent as it is but I should like the idea of making an advance on the present law to guard against seduction of girls which take place in Assam amongst low class people and depressed communities.
3. Crime of seduction are frequent in some parts of Assam especially the upper portion. The amendment of 1925 succeeded a little in reducing cases of rape outside marital state and seduction of girls for immoral purposes; but I think, further raising the age of consent will go a great way to reduce the number of such cases which occur in the cases of girls whose ages vary from 14 to 16.
4. The amendment was not of much use here except in case of Brahmins, who represent only a minority in proportion to the whole population of Assam. The married girls are not allowed to go with their husbands even after attaining puberty before performance of second marriage. Members of other castes marry girls after their attaining puberty and generally a few years after passing puberty. I would suggest raising the Age of Consent to 16 years.
5. The usual age at which girls attain puberty here is between 13 and 14 years. In the case of low castes and backward communities this differs, the usual age in their case being generally 14 to 16.
6. Cohabitation is not heard of here before puberty, before a girl attains puberty in her 13th or 14th year but it is done in some cases soon after puberty specially by a Brahmin performing second marriage shortly after a married girl attains puberty.
7. Early marriage among Brahmins is due to religious injunctions and social usage, according to which a Brahmin's girl cannot be given in marriage on her passing puberty before marriage and parents and relations associating with her are kept out of society.
8. Garbhadan ceremony is performed only by Brahmins in our parts during the time of pregnancy.
9. I do not consider the attainment of puberty to be sufficient indication of a girl's physical maturity to justify consummation of marriage. I should think a girl's physical development at 18th year of her age sufficient to justify such consummation without injury to health of herself and her progeny as even in 16th year such development is not considered complete.
10. I am not in a position to say of India at what age a girl will be competent to consent to cohabitation with due realization of consequences, as it will differ in different parts of India according to culture and intellectual development but about Assam I shall put the age at 16 years, in case of depressed classes at 18 years.
11. A girl cohabitating from her 13th or 14th and given in marriage soon after her passing puberty at that age and before full physical development generally shatters her own health if 2 or 3 issues born to her in quick succession at intervals of 2 years or less. Such children are generally sickly unless sufficiently nourished which is not easy in these days of hard timing.
12. Early consummation and early maternity is responsible to a large extent for a high maternal and infantile mortality, consummation should be conceived with prudence, which is not exercised in our parts and

unlike European countries. I should add that want of proper nourishment of infants and ignorance of elementary principles of hygiene vitally affects the healthy growth of children, and consequently the intellectual and physical progress of the people.

13. Yes, among educated people except orthodox people who are conservative in spirit and averse to owing to their peculiar religious susceptibilities to any legislation regarding marriage. But educated people are in favour of the extension of the Age of Consent in both marital and extra-marital cases.

14. Women who are sufferers due to early consummation of marriage are not in favour of it for their children, growing wiser from the ill-consequences in their own cases.

15 and 16. Much difficulty is experienced in determining actual age of girls in offences under Sections 375 and 376, I. P. C. Medical opinion not being conclusive and horoscope not being available, offences being generally committed by men of low classes and backward communities. No definite criterion can be fixed of ascertaining the age between 11 and 16 years but 16 is the maximum age of cutting of Molar teeth and if the Age of Consent be raised to 16, the difficulty might be minimised.

17. The division of offence noted in extracts from the Codes of Criminal Procedure, 1898, schedule of rape will in my opinion do except that in case of intercourse of a man with his own wife before puberty (under 13 years of age) the maximum punishment should be imprisonment of either description for 10 years transportation for life and fine and in the case before puberty (under 16 years of age) with imprisonment of either description for 2 years and fine.

In any other case under Section 376, the punishment should remain as it is.

18. In the case of trials without marital state, the procedure should remain as it is; but in the case of trials within marital state the procedure in case of intercourse with his own wife before puberty under 13 years police shall not arrest without warrant, bailable, not compoundable, and triable by court of sessions, Chief Presidency Magistrate or District Magistrate and in the case of intercourse with his own wife before puberty (under 16 years of age) police shall not arrest without warrant, bailable, not compoundable, and triable by Chief Presidency Magistrate, District Magistrate, Sub-divisional Magistrate of 1st class of offences falling within his sub-division.

19. Existing safeguards and that police shall not arrest without warrant are, I think, sufficient.

20. Legislation fixing the minimum age of marriage is quite rational; but it is not practicable as it will be detrimental to the interest of orthodox Hindus such as Brahmins, who according to religious injunction are to give their girls in marriage before puberty and the age puberty varies. So I think penal legislation fixing a higher Age of Consent for marital cases will be in consonance with public opinion here.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view as it will take a very long time to depend on the progress of social reform, which is very slow in our part of the country.

**Written Statement, dated the 11th August 1928, of Mr. D. BEZ-BAROA, B.L., Chairman, Municipal Board, Jorhat, Assam.**

1. There is no general dissatisfaction with the state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, but the advanced section of the educated classes would like to make an advance on the present law.

2. In my opinion age of thirteen is too early an age for consummation of marriage even among people who are accustomed to early marriage. A girl of thirteen is not fit to be a mother both physically as well as in other respects. A girl may be said to attain some amount of physical maturity after she reaches the 16th year. In Assam Valley districts except among Brahmins girls are married after they attain puberty. I would therefore prefer Sir Hari Singh Gour's Bill to the law as stated in the Indian Penal Code.

3. The crimes of kidnapping, seduction and rape are fairly frequent in my part of the country among the lower classes of people though such cases are rare as far as girls below 14 years of age are concerned. The amendment of law made in 1925 has not much affected cases of the nature. Unless the Age of Consent outside the marital state is increased to 16, cases of seduction of girls between 14 and 16 will not be materially reduced.

4. Cases of cohabitation with married girls below 18 by their husbands are rare in my part of the country as girls do not go to their husband's house even among the Brahmin community before they attain puberty.

5. Girls usually attain puberty in my part of the country at about 13 or 14.

6. Such cohabitation is rare in my part of the country. Such cases do not come to court.

7. Early marriage among Brahmins is prevalent in my part of the country due to religious injunctions but consummation, as a rule, does not take place till some time after the married wife attains puberty. There is, as far as I know, no religious injunction directing consummation of marriage immediately after puberty and there is no penalty attached to any delay in consummation of marriage.

8. Some ceremony is usually performed in my part of the country shortly after a girl attains puberty but it is not known by the name of 'Gaona' or 'Garbhadan'. Among Brahmins consummation usually takes place shortly after such ceremony but among other classes marriage takes place some time after the girl attains puberty and the ceremony is performed.

9. In my opinion attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. The proper age in my opinion should be 16. But as among the Brahmins the girls are married at an early age before they attain puberty, it is often difficult to prevent consummation even when the girls attain the age of 14. I would therefore keep the Age of Consent at 14 for married girls and at 16 for unmarried girls. It may be stated here that in my part of the country except among Brahmins, girls are not usually married before 16.

10. I would fix the age at 16.

11. No.

12. I think it to be so.

13. As already stated, the amendment of the law in 1925 has not materially affected the people in this part of the country.

14. I don't think it to be so.

15. Difficulties have occasionally been experienced and one has, in such cases, to depend upon medical examination of the girl concerned to ascertain her age.

16. I don't think it to be so.

17. Yes; I would like to insist suggested Section 376A of Sir Hari Singh Gour's Bill.

18. Offences within the marital state should be triable by a Presidency Magistrate or Magistrate of the 1st class whereas offences outside the marital state should be tried by the Court of Sessions as at present.

19. No suggestion.

20. Penal legislation fixing a higher Age of Consent for marital cases is likely to be more in consonance with public opinion in this part of the country. Marriage among Brahmins before puberty is considered as binding from religious point of view but not consummation of such marriage.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view as it will take a very long time to attain the object if we have to rely on progress of social reform by means of education and social propaganda.

**Written Statement, dated 11th August 1928, of Mr. P. S. GUHA, B.L., Vice-Chairman, Shillong Municipal Board.**

1. The provisions in Sections 375 and 376 of the Indian Penal Code are quite unknown to the mass of people. There is therefore no question of satisfaction or dissatisfaction.

2. It is quite immaterial whether any change in the existing law is made or not as these things cannot possibly be controlled by legal penalties. Nothing but social reforms and moral teachings can do anything in this respect.

3. As far as my information goes crimes of seduction or rape is not frequent in that part of the country to which I belong. It is also doubtful whether amendment of the law made in 1925 had actually any effect as the question of age neither occurs in the minds of the ruffians nor is considered by them when any offence is committed.

4. In some cases marriage actually takes place after the age of 13. This is not due to the amendment of 1925 but to the fact that people are sometimes compelled by circumstances to put off marriage beyond 13 years.

As far as I am aware nothing was done to stimulate public opinion in this direction.

In any case consummation of marriage is postponed till the girl arrives at puberty, which generally does not take place before 13 years of age.

The law can be made effective if by legal enactment the girl is not allowed to go to her husband's house before she attains a certain age but "Garbhadhan" ceremony (*vide* answer to Question 8) will stand in the way.

5. The age of puberty varies in accordance with the difference of climate, race, constitution and the way of life. The usual age is 12 or 13 years; sometimes earlier, at other times later. In cold countries it is about 14 or 15 years. Generally the girls of the rich and town-reared people menstruate earlier than those of the poor and country-bred. An atmosphere of sexual excitement, idleness, luxury, the use of rich and highly seasoned food, condiments and stimulants hasten menstruation.

6. Cohabitation before puberty and before the girl completes 13 years of age is not common but this is common soon after puberty within the marital state. Number of cases which come before the court is (if any) very small.

7—8. Early consummation of marriage at puberty is attributable to religious injunction. "Garbhadhan" ceremony, which is usually performed in our part of the country coincides with the consummation of marriage. It is performed just after attainment of puberty and within 16 days of such attainment.

(Authority for and the nature of the religious injunction and the penalty prescribed will be communicated later if these are actually required by the Committee.)

9. No. The arrival at puberty is not coincident with the complete development of all the generative organs which continue to grow for some years more. 16 years of age may be considered generally to be enough to

justify consummation without injury to her own health and that of her progeny.

10. At least at the age of 16 and not before that. Generally at this age the girls begin to become sober and can realise the future consequences.

11. Such cases are not sure but it is difficult to cite instances with details.

12. Cohabitation before complete development of all the generative organs is highly injurious to the health of the mother as well as of the child that may happen to be born. The Hindu law giver Manu compared the womb to the soil and the male element to seed and said that as a proper and healthy seed falling on a defective soil cannot possibly produce a healthy tree, so the healthy masculine element falling on an undeveloped womb cannot produce a healthy child, such children generally become weak and feeble both intellectually and physically. Early consummation and early maternity are in several cases responsible for high maternal and infantile mortality.

13—14. No.

15. Difficulties are always experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code but in such cases there is no other alternative but to depend on the opinion of medical officers.

16. In some cases it may be possible but not always as everything depends on the constitution of the girl in question.

17. Yes, there should be a difference between extra-marital and marital offences. In extra-marital offences no one will grudge even if the punishment is enhanced but in marital offences (number of which is very small) should be light and should be confined to fine or simple imprisonment or both according to the gravity of the offence. In marital offences future of the girl wife will also have to be considered. If the husband goes to jail there may not be any one in the family who can take charge of the girl.

18. Marital offences may be tried by a Presidency Magistrate or a Magistrate of the first class. In other respects no change in the existing procedure seems desirable. Any change in the provision for trial of extra-marital offences seems hardly called for.

19. No remarks.

20. Penal legislation fixing a higher age of consent for marital cases will be more preferable than legislation fixing the minimum age of marriage as it will be difficult to restrict child marriage. So far as Hindus are concerned marriage is a sacrament which must be performed at a certain period of life regardless of the fitness of the parties to bear the responsibilities of a mutual existence. A Hindu maiden unmarried at puberty is a source of obloquy to her family and of damnation to her ancestors. Hindu Sastra on the point is quoted below:—

মাতা চৈব পিতা চৈব জ্যেষ্ঠভ্রাতা তথৈবচ

এয়ন্তে নরকং যাস্তি দৃষ্টা কন্যাং রজস্বলাং

বস্তাং বিবাহয়েৎ কন্যাং ব্রাহ্মণো মদমোহিতঃ

অসংভাষ্যোহপাংস্তেয়ো জ্ঞেয়োহসৌ বৃষলীপতি ।

In another place we find—

পিতুর্গেহে চ বা কন্যা রজঃ পশুত্যসংস্কৃত্য

ব্রণহত্যা পিতৃস্তুস্তাঃ সা কন্যা বৃষলী স্মৃতা ।

বস্তাং বিবাহয়েৎ কন্যাং লোভাখোহাক মানবঃ

অব্রাহ্মণেয় মপাংস্তেয়ং তং বিদ্যাৎ বৃষলীপতিং ।

Among the Mahammedans, who are not handicapped by such penalties the marriage state is equally common, partly owing to Hindu example and partly to the general conditions of life in primitive society. It will not therefore be regular to control marriage by legal penalties.

21. As stated against question 2 it will be preferable to rely on the progress of social reform by means of education and social propaganda.

**Written Statement of Sri Jut RAMDEV SARMA, Secretary to the Pragjyotispur Brahman Somaj.**

1. There is no dissatisfaction as the consummation of marriage (Garbhadhan) is performed on the attainment of puberty.

2. It will seriously affect the religious susceptibilities of the people and cause dissatisfaction if further advance is made on the present Law.

3. The crimes of seduction or rape are not frequent in our part of the country. The amendment has had no effect. Effective remedies lie in real and healthy co-operation between the people and the Police.

4. (1)—(2) No.

(3) No, because these things cannot be regulated by legislation. The religious sentiment of the people requires that the marriage of the girls should be performed before puberty and that the Garbhadhan ceremony should be performed on the first appearance of the menstruation. It is not prudent or justifiable to make any legislation which would interfere with the religious sentiments mentioned above.

5. 12 to 14 years of age. This does not differ in different castes, etc.

6. (1) Not known at all.

(2) Yes.

(3) In a large number of cases where puberty precedes the 13th year. None of these cases come to Court.

7—8. There is no consummation before puberty. The consummation after puberty has its origin in nature more especially in religious injunctions which after cycles of ages have been observed in our country. All Hindu Sastras refer to the Garbhadhan ceremony and its uses and objects are clearly explained in all the religious books Manu, Jajnavalka, Parasara, Bhabadeva and Ashwalayan and many other Authorities originated from the Vedas enjoin that the ceremony has to be performed on the first occurrence of menstruation. The penalty prescribed for its breach is moral and religious but more especially social. By its omission one incurs sin and the progeny born of him becomes unholy and corrupted in the eyes of the Sastras.

Garbhadhan is usually performed among the higher classes of people in this part of the country. All genuine Hindus performed this ceremony and its antiquity dates from the oldest times.

9. The attainment of puberty is an indication of the physical fitness for consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

10. After the attainment of puberty at whatever age it may occur. No definite age can be fixed.

11. As stated above there is no cohabitation before puberty. We do not know of any case in which cohabitation after puberty resulted in injury to health or prejudicially affected her progeny.

12. Presumption after puberty cannot be said to be early consummation, so consummation and maternity after puberty are not responsible for high maternal and infantile mortality.

13. No.



**14. All favour consummation on the attainment of puberty.**

15. There will always arise some difficulties in determining the ages of girls in connection with the offences referred to in this question. No Doctor can be sure about the age of a girl. The attainment of puberty should determine the age of consent, as Medical science can easily determine whether a girl has attained puberty or not.

16. The difficulty in determining the age will not be reduced if age of consent is raised to 14 years or above as no body can be positive as to the exact age of a girl.

17. If puberty is fixed as the age of consent there be no necessity.

18. No, if puberty is fixed as the age of consent.

19. Not necessary if puberty is made the age of consent.

20. As our people consider their religions as sufficient safeguards which enjoin (1) marriage before puberty and (2) consummation on the attainment of puberty, I think none of the alternatives is necessary.

21. Marriage being a sacrament with the Hindus it should not be interfered with any legislation. No modification of any Law in matters religious and social should be made.

**Written Statement, dated the 11th August 1928, of Mr. PAMPA SINGH, Extra Assistant Commissioner, Dibrugarh, Lakhimpur District.**

1. It does not appear that there is any dissatisfaction with the state of the law as to the Age of Consent as it stands now.

2. (2) In my opinion an advance should be made. The present age does not seem to be sufficient to prevent production of weak and short-lived children and protect mothers against premature deterioration of their health. The educated public is becoming gradually more conscious of the evil consequences of the early marriage and would favour—I believe—the raising of the age. Early consummation of marriage is an obstacle to the progress of education both for males and females as it will lead to child-bearing before completion of their education and a thought for their maintenance would become predominant.

3. Crimes of seduction or rape are not frequent in this part of the country (I mean among the Assamese). So the amendment of the law made in 1925 has not had to do much here.

4. Among the people of Assam girls are married generally after the attainment of puberty among the Sudras except among some Kyasthas in the district of Kamrup. In the case of Brahmins girls are always married before the age of puberty but they remain in their parents' house till the attainment of puberty after which husbands are allowed to take them. In all cases consummation can take place only after the puberty. So the girls are protected by social custom and the present law has had to do very little in postponing the consummation of marriage, or putting off marriage beyond the age of 13 or by stimulating public opinion.

5. The age varies from 12 to 14 years generally and the usual age may be said to be 13. The puberty is earlier among the rich and non-labouring people than among the poor and labouring people.

6. Co-habitation is not common before puberty among the Assamese in any class or before the girl completes 13 years. It takes place after puberty but not frequently soon after.

7. There is no practice of early consummation of marriage among the Assamese before or at puberty. Girls are married before the puberty in the case of Brahmins and some Lower Assam Kayasthas and this is in accordance with a sastric injunction in Smriti, where it is said that the father and the

mother and the eldest brother will go to hell if they see the girl in puberty. Breach is punished with excommunication. But there is no consummation of marriage and the girls will remain in their parents' house, even after the marriage till after the attainment of puberty. There is no sastric injunction for co-habitation before or at puberty. On the contrary the Susrut Sanhita enjoins that there should be no co-habitation before the age of 16 in the case of girls and 25 in the case of boys as the child born of such union will be weak and shortlived.

8. There is no *gaona* or *garbhadan* in this part of the country so-called.

A ceremony known as "*Tolonibia*" is performed when a girl attains puberty before or after marriage as the case may be. It is generally before the marriage in the case of Sudras—as marriage takes place after puberty except in the case of some Kayasthas. In the case of Brahmins the ceremony is always performed after the marriage—as marriage takes place before the age of puberty.

There is a ceremony called "*Santibia*" among the Brahmins corresponding to *garbhadan* in which a girl previously married is sprinkled with sacred water just before the consummation of marriage. It does not coincide but is anterior to the consummation of marriage. It is performed soon after the attainment of puberty generally but may be deferred also.

9. I do not consider that puberty indicates physical maturity for consummation of marriage. I would consider three years after the attainment of puberty at the age of 13 or 2 years after puberty at 14 to be the period when a girl may be said to be sufficiently developed for consummation without injury to her health. This however, again depends upon the general constitution of the girl. In the case of a sickly girl consummation may be further delayed and in the case of a healthy girl it may be a little earlier.

10. No average girl in India would be competent to give an intelligent consent.

11. I cannot cite any instance from my personal experience.

12. I consider that early consummation is responsible for high maternal mortality—as the strain of child-bearing at immature age tells upon the health of the mother and production of a large number of children weakens her health and shortens her life. A child as well born at an age before development of the physique of the mother grows weak and becomes incapable of resisting the strain of nature and succumbs to premature death. The consequence is that the people are not physically strong and are naturally of weak intellect.

13. The growth of public opinion in this respect is confined to educated class alone except the orthodox Brahmins.

14. No.

15—16. The raising of the age to 14 also will not in my opinion minimise the difficulty in determining the age unless the difference is appreciably noticeable. The raising of the age to 15 may minimise to some extent.

17. Yes. Offences should be separated. I agree to the punishment proposed for such class.

18. Yes. I have no suggestion to make as to the procedure of trials for different offences as proposed.

19. No.

20. A legislation fixing the minimum age of marriage is not so much necessary in this part of the country as consummation always takes place after the puberty. If the minimum age of marriage can be fixed at 14 it would be effective but there will be a strong agitation from the public—especially from the Brahmins who must marry their girls according to social custom before the age of puberty.

So I am in favour of a legislation fixing a higher Age of Consent rather—though I doubt its utility. It will not be easy to detect offences connected with the Age of Consent with marital relation—as none among the family

in which the offence is committed will come forward to complain and get a nearest and dearest member punished, and the law would remain a dead-letter like the Juvenile Smoking Act in Assam—unless a neighbour be prompted to give information out of some grudge or enmity.

21. I would rely more on the progress of social reform by spread of education and social propaganda. But still I would be in favour of a legislation which may not be effective immediately but may have its effect in course of time.

**Written Statement, dated the 12th August 1928, of Babu RADHA RANJAN DHAR, M.A., B.L., E. A. C., Habiganj.**

1. No particular dissatisfaction is in evidence except among reformers.
2. My reasons for raising the Age of Consent to 16 years are the following :—

- (i) In section 361, Indian Penal Code, it has been rightly recognised that a female under 16 years of age is not competent to exercise discretion and give responsible consent.
- (ii) Before 16 years, a girl is not expected to attain that standard of physical development which should be insisted upon on moral, physical, and intellectual grounds before any co-habitation may be permitted.

I would have made the Age of Consent same in marital and extra marital cases, but lest the increase of age might be considered too inexpediently abrupt, I would reduce it to 14 or 15 years in marital cases.

3. Crimes of seduction are frequent and those of rape are also not few.

It is premature yet to give opinion as to the result of the amendment of 1925.

As a further deterrent, I would propose that attempt to commit rape should be particularly penalised like other heinous offences (*c.f.* Sections 307, 308, 393, 398, Indian Penal Code).

4. (1) Where girls below thirteen years of age are married, it is not likely to postpone the consummation under the existing state of things. In India, girls attain puberty between 12 and 14 years of age and in some cases even earlier. The guardians, particularly females, generally facilitate co-habitation between husband and wife, to say nothing of impeding it.

- (2) Public opinion is slowly being stimulated against child marriage and early consummation of marriage.

- (3) Economic causes and those relating to education of girls have no doubt contributed to the extension of marriageable age in educated society but amongst uneducated people and orthodox Brahmins, the marriage of girls does take place even before they are 13 years old.

To make the law more effective, there should be clear provisions to punish those who 'assist' or 'abet' such criminal co-habitation between a husband and a child wife. The chance of concealment or sufferance of such co-habitation may also be minimised by including the offence in Sections 44 and 45, Criminal Procedure Code.

5. Girls generally attain puberty between 12 and 14 years. As it depends so much upon climate, constitution and moral circumstances, it varies with different castes, communities and classes according as these provoking circumstances are existent or non-existent.

6. (1) Co-habitation is not common before puberty, though in the case of married girls it may not be unlikely.

- (2) Co-habitation is the rule soon after a married girl attains puberty.

- (3) Co-habitation is probably also the general rule if the married girl attains puberty before completing 13 years.

Except rape or attempted rape on minor girls, no case of co-habitation between husband and child wife has come to court within my experience.

7. No.

8. 'Garbhadhan' ceremony, 'Second marriage' as it is also called, is performed here. It is generally anterior to the consummation of marriage. It is performed after the attainment of puberty if puberty is attained after marriage but in the case of the girls attaining puberty before marriage it is performed after the first monthly 'course' after marriage.

9. The attainment of puberty is not necessarily the correct index of the requisite physical maturity to justify consummation of marriage. The climatic conditions, constitution, and other moral and artificial provocative circumstances may lead to early attainment of puberty. The right physical development for a safe consummation of marriage will in my opinion be attained at the age of 16.

10. At 16 years of age.

11. I have come across many cases in which co-habitation before full physical development of girls resulted in injury to their health and prejudicially affected their progeny. To cite two instances, two girls, attaching puberty at about 13, have become physical wrecks and their first-born children died and the rest are both physically and intellectually half-developed.

12. Early consummation and early maternity plus careless and inefficient handling both during child-birth and post-maternity and pre-maternity periods are responsible for high maternal and infantile mortality. Early maternity of immature girls certainly causes the intellectual and physical degeneration of the people.

13. Development of public opinion in this respect is confined to educated classes, particularly to social reformers.

14. The women mostly favour consummation of marriage as soon as the girls attain puberty.

15. Medical evidence is generally accepted. But there have been cases in which there was difference of opinions amongst doctors. In such cases, horoscopes and vital statistics may be useful provided they are made reliable.

16. It may be minimised if the Age of Consent be raised to 16 years when full development is expected in girls except in the case of morbid constitution.

17. I would. The maximum punishment for extra-marital offence should be transportation for life or imprisonment of either description for a term which may extend to ten years and also fine. The maximum punishment for marital offence should be imprisonment of either description for a term which may extend to five years and also fine. The proposed maximum of two years' imprisonment for marital offence, I am afraid, will not meet all aggravating circumstances.

18. The extra-marital offence should be a non-bailable and non-compoundable offence triable by the Court of Session, in which warrant shall ordinarily issue in the first instance and for which the police may arrest without warrant. The marital offence should be a bailable but non-compoundable offence triable by the Court of Sessions, Presidency Magistrate, and Magistrate of the first class in which summons shall issue in the first instance and for which the police shall not arrest without warrant.

19. No further safeguards seem necessary beyond what is suggested in 4 (3) above.

20. I think that the legislation fixing the higher Age of Consent for marital cases would be more effective and expedient than that fixing the minimum age of marriage. It is the early consummation and early marriage which have got to be stopped and not merely early marriage. There are places in India in which husband and wife are made to live apart till they attain puberty and sufficient maturity. The age of marriage of a Hindu girl depends upon old customs and traditions and even religious injunctions and it would be inexpedient to fix the minimum age of marriage.

Public opinion is rather inarticulate in this respect but if they are asked, they will, I hope, vote for the legislation fixing a higher Age of Consent.

21. I would strengthen the penal law as suggested above and at the same

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Public Health, which however will take time. After the latter bears fruit there will be little need for enforcing penal law except in the case of a few recalcitrant persons.

**Written Statement, dated the 15th August 1928, of Maulvi SAYIDUR REHMAN, M.A., B.L., M.L.C., Dibrugarh.**

I have the honour to submit that crimes of seduction or rape are of rare occurrence in this part of the country, that girls attain puberty at the age of 12 to 14, that co-habitation before puberty is not common amongst people here, that "Gaona" ceremony is performed by the up-country men domiciled here but it is performed within six months of the attainment of puberty and that public opinion in this part of the country is not in favour of an extension of the Age of Consent in marital and extra-marital cases.

**Written Statement, dated the 28th July 1928, of Rai KALI CHARAN SEN, Bahadur, B.L., Ex-Government Pleader, and Secretary to the Sanatan Dharma Sabha, Gauhati.**

1. The people do not wait for the statutory age. The consummation of marriage (Garbhadan) is performed on the attainment of puberty and hence there is no dissatisfaction.

2. Further raising of the age would seriously affect the religious susceptibilities of the people and cause widespread dissatisfaction. Making a further advance is not prudent or justifiable.

3. Crimes of seduction or rape are not frequent in this part of the country. I do not think the raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside marital state. Improper seduction of girls might have been affected to certain extent. Prompt action by the police to apprehend the culprits seems to be the only means to stop these offences.

4. I do not think the amendment of 1925 raising the Age of Consent within the marital state to 13 years has been effective in protecting married girls against co-habitation with husband within the prescribed age limit (a) by postponing consummation of marriage (b) by stimulating opinion in that direction or (c) by putting off marriage beyond 13.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation on the appearance of 1st menstruation. I do not think any steps are required which would interfere with the religious sentiments above referred to.

5. The usual age at which girls attain puberty is 12 to 14. Almost all the girls attain puberty between the age of 13—14. I am not aware that this differs in different castes, etc.

6. Co-habitation is not common before puberty but it is common after puberty. Co-habitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to Court.

7—8. Consummation of marriage at puberty is enjoined by religious injunctions. The Hindu sastras enjoin certain religious ceremonies called

garbhadan on the first happening of puberty. All Hindu sastras refer to this ceremony and its uses and objects are explained in all books. Many ceremonies have to be observed. The husband and wife have to fast and gods have to be worshipped and sradh has to be performed. The mantras that have to be recited on this occasion conclusively establish the point that garbhadan has to be done on the first menstruation.

I quote one of the mantras from Bhabadeva which are to be recited on the occasion :—

“ O thou eternal sun, thou  
are the creator, the preserver  
And the destroyer of this universe,  
I offer you this oblation on the  
*1st occurrence of menstruation.*”

There are a number of mantras mentioned by Bhabadeva which all mention “ first occurrence of the menstruation ”.

The Ashwalayan Grihya Parisishta, Chapter 1, clearly enjoins that the ceremony has to be performed on the first occurrence of menstruation.

Garbhadan coincides with consummation of marriage. It has to be done within 16 nights after the 1st menstruation.

Garbhadan is usually performed in this part of the country.

All genuine Hindu observe this ceremony. Its antiquity dates from the oldest times. Through millions of years and through cycles of ages, this practice has been observed in our country continuously without any intermission. In all religious books whether they are Vedas, Smirities, Puranas, this ceremony has been emphatically insisted on.

By its omission, one incurs sin and the progeny born of him becomes unholy and corrupted in the eyes of the sastras.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

N.B.—“ The first menstruation is the usual sign that girl has become capable of conception and child-bearing ” (Gallabin's Midwifery, page 45). In most cases the first menstruation is believed to mark the 1st ripening (see Gallabin's Midwifery, page 39). The 1st appearance of menstruation coincides with the establishment of puberty, and the physical changes that accompany it indicate that the female is capable of conception and child-bearing (The Science and practice of midwifery, by W. S. Playfair, M.D., LL.D., page 72.)

10. No definite age can be fixed in regard to it. Puberty which varies with physical vigor and development is the only point to be taken into consideration. All girls attaining puberty can give consent to co-habitation.

11. I was a Public Prosecutor and Government Pleader for a period of 31 or 32 till the close of the year 1927. I have not come across any case in which co-habitation after puberty resulted in injury to health or prejudicially affected her progeny.

12. I do not think consummation after puberty can be said to be early consummation. In this connection, I would invite the attention of the Committee to pages 10—12 of the pamphlet published by Babu Charu Chandra Mitra, Attorney-at-Law (a copy of which is herewith enclosed).

I quote from the Rationale of early marriage system by U. P. Krisnamacharya, page 35.

“ Take Madras city itself where the corporation authorities lately published their Death Rate Returns for 1926-27. These figures show clearly that in the most “ early married ” community, i.e., the Brahmins, infantile mortality is the lowest.”

13. Since the amendment of 1925, I do not think there has been any further development of general public opinion in favour of an extension of the Age of Consent (marital or extra-marital).

14. All favour consummation on the attainment of puberty.

15. There have been considerable difficulties in determining the age of girls in connection with offences under Sections 375 and 376 and also under Section 363 of the Indian Penal Code. No doctor can be seen about the age of a girl when there is the difference of a year or so and no two doctors will agree as to the precise age of a girl when the difference of a year or six months is in question. I think the attainment of puberty should determine the Age of Consent. Medical Science can easily determine whether a girl has attained puberty or not and extraneous evidence will also be much more reliable if menstruation is fixed as the limit.

16. Nobody whether a medical or a layman can positively swear whether a girl is 18 years six months or 14 years. It is impossible for any Jury to rely upon such evidence. The difficulty in determining the age will not be reduced if Age of Consent is raised to 14 years or above.

17. I do not think it is at all necessary if puberty is fixed as the Age of Consent.

18. I would not suggest any difference in procedure of trials if puberty is made the Age of Consent.

19. Not necessary if puberty is made the Age of Consent.

20. I would not prefer any of the alternatives people consider their religious as sufficient safeguards which enjoin—

(1) Marriage before puberty and

(2) Consummation on the attainment of puberty.

21. I am against the codification of any penal law in such matters. The normal evolution in all matters religious and social should not be interfered with by any legislation. The civil law should not interfere with the marriage law, marriage being a sacrament with the Hindus.

### **Copy of Note, dated the 6th August 1928, from the Government Pleader, Secretary, Anjuman Islamia, Silchar.**

I am inclined to think that no further amendment of the law is necessary as regards offence under Sections 375 and 376, Indian Penal Code, within the marital relationship. We find that in the case of Hindus and Moham-madans the greatest percentage of dates for first menstruation occurs between the 12th and 14th years. So the limit at which the Age of Consent is fixed by the Act XXIX of 1925, is suitable to conditions in this country. Besides the girls of the higher and middle classes of Hindus are not, now-a-days, married before they have reached the age of puberty. I therefore do not feel the necessity of further amendment of the law so far marital relationship is concerned. Cases in which women are taken by force and ravished by men are of frequent occurrence in these days. I am therefore in favour of further amendment of the law outside the marital relationship as proposed by Sir Hari Singh Gour; because it is necessary for the well of society and country.

### **Written Statement of Rai Sahab BHARAT CHANDRA CHAUDHURI, B.A., Vidyabardhi, Superintendent, Government Normal School, Silchar.**

1. I do not know of any instance in which the law has been put into operation in this part of the country for the breach of it in the marital state. The common people are not aware of or do not mind this law. The question

of satisfaction or dissatisfaction is limited to the educated classes and so far as I know the opinion is divided.

4. The original law or its amendment has had no practical effect on the social customs which are changing owing to other causes.

5. The usual age at which girls attain puberty is between 11 and 12 and never extends beyond 13. There is no noticeable difference in reference to castes or communities.

6. (1) No, among all classes.

(2)—(3) Yes, among all classes.

7. The Hindu sastras enjoin that consummation of marriage should take place after the 4th day from the date of attaining puberty and within 16 days from that date. All Smriti Sanhitas dealing with this subject and particularly all guide books on Smriti are unanimous in this matter. An ordinary *Prayachitta* is prescribed for a breach of this injunction in the event of the absence of the husband from home or the illness of either of the couple. The wife has to abstain from animal food from after the attainment of puberty till the consummation of marriage or *garbhadan* ceremony takes place.

8. The *garbhadan* ceremony is performed in every case in this part of the country among the Hindus. The *garbhadan* is performed after the 4th day and within 16 days of the date of attaining puberty.

9. Attainment of puberty is Nature's own indication that the organs are ready for conception. Principles of self-control based on the conception of marriage as a religious sacrament used to protect the Hindu husband and wife from self-abandon to passion, because abuse of sexual relation is productive of evil at every stage of life and not only on attainment of puberty. Traditions assert that Sivaji and Ranjit Singh were born before their mothers completed their 13th year. Instances of healthy women who became mothers in their 13th year are not yet rare in the villages. Raising the age of marriage or of consent is not likely to improve the situation unless power of self-control is acquired as they were acquired in the past from early boyhood.

10. A due realisation of consequences is not only a product of intelligence but also of experience and an unmarried girl of less than 20 years is not likely to give intelligent consent.

12. My reply is in the negative. The evils attributed to early consummation of marriage are not the result of a single cause but spring from various social and domestic causes.

14. Yes, universally, except those few who are imbued with modern ideas.

15. I would leave the matter entirely to the forces of social evolution. The object in view cannot be secured by legislation as the offences, at least the majority of them, will remain undetected.

**Written Statement, dated the 22nd September 1928, of Mr. D. C. PATTERSON, I.C.S., Judge, Assam Valley Districts, Gauhati.**

(1) Yes, but the dissatisfaction is probably confined to the very small minority who are concerned with what the rest of the world thinks of India, and to political and social reformers of a certain school of thought:—there is no general dissatisfaction.

2. (a) There is no justification for retaining the law of the Age of Consent as it is, so far as extra-marital relations are concerned. Not many people are interested in the subject, but of those who are interested in it, the great majority would not only welcome the raising of the age to sixteen, but would, at any rate, *acquiesce* in attempts to enforce the law.

(b) As regards the Age of Consent within the marital state, this is a subject in which all Hindus, and many Mahomedans, are vitally interested. The only circumstance justifying the retention of the law of the Age of



Consent as it is, is that the existing law is already far in advance of public opinion, as expressed in actual practice, and is almost impossible to enforce. An advance on the existing law might have some educational effect, but the law itself would remain a dead letter, unless those who advocate such an advance, would be willing; both in public and in private, to help to enforce it.

3. Rape appears to be fairly frequent in the Assam Valley, though not as frequent as in parts of Bengal, *e.g.*, Mynensingh. The same applies to kidnapping with a view to seduction, which is, however, for the most part, confined to the numerous immigrants from East Bengal.

As regards the second part of the question, I doubt if the raising of the Age of Consent to 14 has had much effect, partly because it is not generally known that the law has been amended, but mainly because consent is never pleaded unless the girl has attained puberty, in which case the prosecution has generally great difficulty in proving that she is under 14.

The Age of Consent as it stands at present, approximates too closely to the age of puberty, and raising the age to 16 will make the law more effective as regards girls who have only recently attained puberty:—it is often difficult to prove that such girls are under 14, but it will be comparatively easy to prove that they are under 16.

4. Public opinion has, to some extent, been stimulated by the amendment, but the practical effect has been negligible, so far as the postponement of marriage, or of the consummation of marriage, is concerned.

It is impossible to make the amendment effective, unless public opinion in that direction can be stimulated to the point of active co-operation with the authorities in enforcing the law.

5. I have no information on the subject.

6. I understand that co-habitation is rare before puberty, or before the girl completes 13 years, and that it is usual, though by no means universal, shortly after puberty.

Cases of rape by a man on his wife practically never come to Court, at least that has been my experience:—I have only seen one such case in 25 years.

7—14. I have no information on these points, and am not in a position to express any opinion.

15—16. If a girl has attained puberty, the difficulty of proving that she is below 14 is enormous, and that of proving that she is below 13 is even greater.

I would either abolish the Age of Consent, expressed in years, altogether, and make the validity or otherwise of the girl's consent, depend on whether she has or has not attained puberty,—or else I would raise the Age of Consent to 14 in the case of married girls, and 16 in the case of unmarried girls.

Yet another alternative,—(and perhaps the one that would have the greatest measure of public support, and would be the easiest to enforce),—is to make sexual intercourse by a man with his own wife punishable only if the wife has not yet attained puberty,—and to fix the Age of Consent in case of unmarried girls at 16.

I would also bar suits for restitution of conjugal rights, etc., in cases where the wife has not yet attained puberty.

17. The question of how to deal with extra-marital offences is a simple one, and can be dealt with on the ordinary principles of humanity and expediency.

The question of how to deal with marital offences is, however, bound up with the social usages and the religious beliefs of the people, and must be approached in an entirely different spirit.

Marital and extra-marital offences ought, therefore, to be separately dealt with.

As regards extra-marital offences, I would reserve the maximum punishment, (transportation for life), for rape without consent, and for rape, with or without consent, on a girl who has not yet attained puberty:—I would fix some lesser maximum for rape with consent, on a girl who has attained puberty, but has not yet reached the statutory Age of Consent.

As regards marital offences, I would make transportation for life the maximum punishment for rape by a man on his wife, if she has not yet attained puberty, and would make two years imprisonment plus fine, the maximum, if the wife has attained puberty, but has not yet reached the statutory Age of Consent.

18—19. I would make no difference in respect of the procedure to be followed at trials for either class of offence, but I would limit the right to institute criminal proceedings in respect of marital offences, (except in cases where the wife has not yet attained puberty), to the wife herself, and to certain recognised religious, philanthropic, and social reform organisations.

20. Both forms of legislation will have a certain educative value, but neither is likely to be at all effective unless the active co-operation of the local leaders of Hindu society, high and low, can be secured.

There is more hope of such co-operation being secured in support of penal legislation fixing a higher Age of Consent for marital cases, but I think such legislation is useless,—(except as a "gesture", and with a view to educating public opinion),—unless there is a reasonable prospect of those who support it themselves taking an active part in enforcing the law. For this reason, I would make such legislation applicable in the first instance only to districts in which non-official organisations exist which will co-operate with the authorities in trying to make the law effective.

As regards penal legislation fixing the minimum age of marriage, this would appear to be, in theory, comparatively easy to make effective, as marriages are celebrated in public, and consummated in secret,—but I see no prospect whatever of such legislation getting the necessary amount of public support. Any attempt to enforce it on an extensive scale would rouse such fierce opposition that the attempt would have to be abandoned, and the new laws repealed.

Of the two alternatives, the former, (legislation fixing a higher Age of Consent), would be more in consonance with educated public opinion,—partly because it is difficult to resist the arguments advanced in support thereof, partly because it would redound to the credit of India in the eyes of the outside world, but mainly because there is little or no prospect of its being made really effective. In the absence of active non-official co-operation, Government would have to bear the odium either of enforcing, or of failing to enforce the law, and every one would be pleased, with the exception of the unfortunate child wives themselves, and a few ardent social reformers.

21. Both ought to go hand in hand,—the penal law a little in advance of public opinion, but not so far in advance as to be brought into contempt on account of its importance.

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**Written Statement, dated the 10th December 1928, of Khan Bahadur AMJAD ALI, Public Prosecutor, Sylhet, Assam.**

I may be permitted to say, however, that in my humble opinion, based on long years' experience in this connection, that it is an absolute necessity all over India now a days that the Age of Consent should, at all events, be raised to a reasonable maximum to protect our society by saving our helpless girls from premature decay and death.

This is a problem which has been working in my mind for a very long time and if on the report of the committee the Age of Consent be raised, as desired, not only my long cherished hopes, will be realised, but such a pious legislation will perpetuate the memory of the Committee, as a monument in every household.



## BURMA.

### Written Statements of persons not orally examined.

#### Written Statement, dated the 24th July 1928, of the Young Men's Buddhist Association.

My association is in favour of the Age of Consent being raised from 14 to 16 as it feels that girls under 16 are not competent to look after their own interests in sexual matters and that they do require the protection of law.

It is also in favour of the age for sexual intercourse after marriage being raised from 13 to 14 in the interests of humanity.

#### Written Statement of Mr. MAUNG KUNG, Bar.-at-Law, Rangoon.

1. As regards Section 375 (5), it ought to be put at eighteen years of age for the offence to become rape when the sexual intercourse is done with or without her consent.

And with regard to the exception to that section, the age ought to be raised to sixteen years to relieve a man from the penalty of rape, even if the sexual intercourse is with his own wife.

Under Section 376 also the exception clause in brackets should be modified so as to state that the age of the wife should not be under sixteen if the man is to be relieved from liability for rape.

This of course would be in a way an advance on proposed amended Section 376-A. I am however speaking here with reference to the state of things as they should exist in Burma.

2. An advance on the present law should be made in my opinion, because the children born of marriages of immature parents would not in my opinion be able to inherit the full brain and sinew power of their parents, and without such children to carry on the traditions of the races to which they belong the races would soon become of no use to carry out the amelioration of themselves in political and social spheres.

3. The crimes of seduction and rape are not very frequent in my country. I cannot say anything with regard to the rest of this question.

4. As regards question 4, as early marriages are not common in my country, I cannot answer anything with regard to it.

5. I believe girls in Burma attain puberty about 14 years of age. It may be slightly earlier with regard to girls of working class communities.

6. (1) No.

(2) & (3) Very very rare.

I cannot say positively whether such cases ever come to Court at all.

7. I cannot say whether early consummation of marriage is due to religious injunction or not in places besides Burma, but there is no such injunction so far as the Burmese people are concerned, as almost all of them are Buddhist and Buddhism lays down no injunction to that effect whatsoever.

8. No. I cannot answer the remaining questions of this query.

9. No. About five or six years after the attainment of puberty a girl's physical development should be considered to be enough to justify consummation of marriage without injury to her own health and that of her progeny.

10. About eighteen years of age.

11. No.

12. Yes.

13. Yes. It is general.

14. No.

15. Occasionally. I cannot suggest any for the time being.

16. It would I think be reduced to some extent.

17. Yes. I would prescribe a bigger sentence for an extra-marital offence than to that of a marital offence.

18. As regards this question it is a difficult matter for me to give an opinion thereon.

19. No.

20. Penal legislation would I think be more effective. I think penal legislation would be more in consonance with public opinion in my country.

21. I would like to rely on the strengthening of the penal law to secure the object in view.

**Written Statement, dated the 6th August 1928, of Mr. P. K. ROY, B.A., B.L., Advocate, High Court, Rangoon.**

1. Not very much.

2. There is not much necessity of an advance on the present law owing to the present social condition.

The Age of Consent of a married woman to her husband ought not to be raised for the present regard being had to the difficulty in keeping the Indian girls in a majority of Indian families unmarried till their 13th year. Although it is true that girls should not be married before they are 14 or 15 or even 16, yet it is not possible unless there is an improvement in society. The Indian parents through various circumstances are forced to think of their daughter's marriage as early as possible. But although it is reprehensible that girls should be married before they attain their puberty or just after they attain puberty, yet taking into account the fact of the joint family system and other causes prevailing in the present Indian Society it is much safer for the girls to get married at least at 13 years of age.

With regard to the Age of Consent where outsiders are concerned it could be made as high as possible—Say 15 years.

3. (a) The crimes of seduction or rape could be said to be rather frequent in Burma and even in Bengal to which I belong. But the reason is not because the Age of Consent is much lower. The reason is to be found in other quarters. It is because there are so many people who set the social law and public opinion at defiance. It is a mistake, in my opinion, to think that crimes will diminish if strong legislation is introduced. The general tone of the Society in all communities is bad and unless there is a reform from within, i.e., by education and strong public opinion crimes of all sorts will be on the increase.

(b) The amendment of the law raising the Age of Consent has not succeeded in reducing cases of rape or seduction of girls. It is very difficult to find measures to make the law effective. The measures, to my mind should be in education of girls and social propaganda.

4. I doubt very much, because:—

(1) Consummation of marriage could only be postponed if the parents of the husbands and the husbands are considerate,

(2) Public opinion in this connection is, in my opinion, non-existent, and

(3) Marriage is not in all cases put off beyond 13 years.

I have dealt with the steps which might make the law effective.

5. Girls generally attain puberty between 12 and 13. There are some cases of puberty at 11 also.

The age of puberty differs in different classes of Society.

6. Not common before puberty or soon after puberty.

7. No. There is no religious injunction regarding early consummation of marriage. If any Indian says that there is such religious injunction he must be telling through gross ignorance.

8. "Gaona" ceremony to my knowledge used to be prevalent in Behar and North India, but not in Bengal. I don't know however if it is still prevalent in North India.

"Gaona" so far as my experience goes, was not meant to be "Garbhadan" because the "Garbhadan" ceremony has long become obsolete. It mean only "going to husband's house". So far as I knew "Gaona" took place sometime after the marriage and, according to the custom, always after the attainment of puberty. It is difficult to say how soon after puberty it took place.

9. (a) No.

(b) Two or 3 years after puberty.

10. Fifteen or sixteen.

11. No.

12. Early consummation and early maternity are not the only cause. There are other and graver causes, such as, poverty, want of nourishment, want of proper knowledge in nursing and nurturing infants.

13. There has been some further development of public opinion in this connection, but it is in no way general, but confined to a limited number of the educated public.

14. No.

15. There are difficulties. I have already mentioned what could remove or minimise the difficulties in some of my previous answers.

16. It is better to raise the Age of Consent to 14 or above in *extra-marital* cases, but I have my doubt whether the difficulty will ever be reduced or minimised.

17. Extra-marital and marital offences should always be treated as different offences. But I don't think higher punishments are called for in either case.

18. The procedure of trials is not needed to be changed.

19. It is difficult to suggest any safeguards and I should say that the procedure should remain as it is. Unnecessary legislation sometimes undermines society.

20. If any legislation is at all needed it is better to fix the minimum age of marriage than a higher Age of Consent for marital cases. There should be some consideration for human frailties also.

21. I am strongly of opinion that progress of social reform by means of education and social propaganda will do far more good than the strengthening of penal law and I should say that legislation need not be taken recourse to if there is a help for it.

**Written Statement, dated the 4th August 1928, of Mr. U. TUN MAUNG, B.C.S., Officiating Deputy Commissioner, Magwe.**

1. There is no dissatisfaction in my district.

2. In those days of civilisation when dramatic performances with songs and acts bordering on obscenity and cinematograph picture shows of similar nature are prevalent throughout the country even girls much below the age of puberty which generally takes place at about 13 learn many things which excite sexual desires in them. The result is that sexual intercourse with mutual consent among children of age of puberty and between such girls and adult males is of very frequent occurrence, especially among poor classes in this country. Therefore the raising of the Age of Consent as at present fixed will create more offences under Section 376, Indian Penal Code. In my opinion the present Age of Consent is suitable to this country and should be retained. There is no necessity to make an advance on the present law.

3. Crimes of seduction and rape are of frequent occurrence in this part of the country. But most of the cases were committed on nubile girls. There were very few cases of seduction and rape on girls under the age of 16. So the effect of the Amendment Act of 1925 was almost nil in this part of the country.

4. In Burma girls are seldom or never married at the age of 13 though there may be sexual intercourse with them as stated in the reply to query No. 2 among certain classes of people.

5. About the age of 13 girls usually attain puberty in this country. There is no appreciable difference between different classes. But this is only general. There have been solitary cases in which puberty is attained at a lower age.

6. Except as stated in the reply to query No. 2 cohabitation before puberty is not common in this part of the country. Cohabitation after puberty is common. But cohabitation before the girl completes 13 years is rare. Solitary cases have come before Courts in which girls before puberty and before 13 years age were cohabited with. But such cases were rare.

7. The religion of Burma, i.e., Buddhism does not prescribe marriage before or at puberty and so there is no practice or custom in this country to marry girls before or at puberty.

8. The ceremony of Gaona or Garbhadan is unknown in Burma.

9. I do not consider that the attainment of puberty in a sufficient indication of physical maturity to justify consummation of marriage. I should consider the age of 18 as the lowest at which marriage may be consummated. This will be about 5 years after puberty. The girl's physical development at this age is generally enough to justify consummation of marriage without injury to her own health and that of her progeny.

10. A girl of 16 in Burma is competent to give an intelligent consent to cohabitation.

11. I have not come across such cases as there was no marriage before puberty, but I have come across a case or two in which marriage was consummated shortly after puberty and the wife giving birth to healthy children without detriment to her own health. But such cases are rare.

12. I do not consider early consummation and early maternity responsible for high maternal and infantile mortality. I do not think that children of early marriage (the earliest in Burma being about 15) are adversely affected intellectually though physical progress of the people may be affected.

13. There is no development of public opinion as regards the amendment Act of 1925 in this part of the country.

14. No. Generally early marriage is not favoured by women in Burma.

15. In Burma birth dates are generally recorded and the records are kept up by parents. Thus birth dates are generally known, so that difficulty is very seldom experienced in determining age of girls in cases under Sections 375 and 376 Indian Penal Code.

16. In view of the fact that medical opinion as to age is always liable to error I do not think that the raising of the Age of Consent will remove or lessen the difficulty in countries where records of birth dates are not kept up by parents.

17. This question does not arise in Burma as girls are seldom married before the present Age of Consent. However I would separate the two offences. I would allow the present measure of punishment stand for extra-marital offences and I would prescribe 2 years' rigorous imprisonment for marital offences.

18. I think a first class Magistrate should try offences within marital state and the present procedure should remain as regards extra-marital offences.

19. I can make no suggestion in this respect.

20. So far as Burma is concerned I do not think legislation of either-kind is necessary. Neither of the two alternative will meet with public approval in Burma.

21. I would rather rely on the progress of social and reform by means of education and social propaganda.

**Written Statement, dated the 6th August 1928, of Mr. U. PO SEIN, B.C.S., Headquarters Assistant, Hanthawaddy, Rangoon.**

1. The law as to the Age of Consent as it stands now is satisfactory in Burma.

2. Child-marriages are unknown among the Burmese. As far as Burmans are concerned the proposed age limit would not interfere with the existing custom relating to marriage, as ordinarily girls are given in marriage after 14 years of age.

I am in accord with the fixing of the age of unmarried girls at 16 years. In fact, there could be no valid reason to object to the extending of the protection to all minors even up to the attainment of their majority. This would be in accordance with the Burmese Buddhist Law, under which the parents and guardians have absolute control over girls under 20 years of age in the matrimonial field. Furthermore, the raising of the age here would have wholesome effect on the community in general and the girls in particular from seduction.

5. The Burmese girls attain puberty between 10 and 11 years of age.

6. Not among Burmans. So far as I remember none of such cases come to court.

14. Not among Burmans.

15. Difficulties have always been experienced in determining the age of girls in connection with offences under Sections 363 and 366, Indian Penal Code, which are tantamount to rape. In cases where the girl is a consenting party and refuses to submit herself to medical examination as to her age, the prosecution results in abortion, especially because there is lack of reliable oral and documentary evidence on the point. Even if the girl consents to the medical examination, the evidence forthcoming is unsatisfactory in most of the cases, which end in smoke. To overcome this, it is desirable to legislate for compulsory registration of the birth of girls, free of charge, in recognized registration offices. The need for legislation on these lines has been felt for a long time. The existing means of proving the girls' age is most defective. The responsibility in this connection lies with the Legislature. for if a law is enacted, provisions



should also be made for attaining the object in view. Unless precautionary measure is taken on the lines indicated, the proposed legislation would only tend to harass the accused without doing any good to the society at large, whilst it would open up wide fields to the legal and medical professions.

**Written Statement, dated the 3rd August 1928, of Mr. A. T. RAJAN, I.C.S., District and Sessions Judge, Akyab, Burma.**

1. There is no marked dissatisfaction with the present state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.
2. Generally speaking I think the Age of Consent should be advanced so as to give adequate protection to immature girls from temptations round them.
3. Complaints of rape and abduction for the purpose of rape or seduction are frequent in Burma, but are mostly false. In these cases the girl has consented to be abducted or to elope with some one, and the criminal complaint is laid at the instance of the parents after they have recovered her, or rarely when the girl herself changes her mind. True cases of rape or abduction for the purpose of rape are few and far between. The amendment of the law made in 1925 could not have had any effect in reducing the number of cases of rape outside marital relations as such cases were very rare. I have no information whether it has had any effect on cases of improper seduction. Such cases occur mostly in Rangoon, of which I have no experience.
4. In Burma cohabitation between husband and wife when the latter is under 13 years of age is practically unknown. Girls do not marry before the age of 15.
5. It is difficult to say exactly what the age of puberty is among the Burmans, but I cannot be far wrong in saying that it is about 13.
6. Such cohabitation is not common. No such cases have ever come to court.
7. This question is not applicable to Burma.
8. No such ceremony is performed.
9. The attainment of puberty is not a sufficient indication of maturity to justify consummation of marriage. I should say eighteen would be the proper age for consummation of marriage without injury to the girl or her progeny. The physiological reasons for this are well known to medical men and scientists. I believe full maturity is attained only when growth stops which takes place at the age of 18 to 20 in the case of a woman.
10. I think a girl in India may be expected to give an intelligent consent at the age of 18 which is the age at which the law presumes that she is capable of managing her own affairs. I do not think she can be expected to view the question of sexual intercourse critically at any age before 18.
11. I have not come across any such cases. There are many cases in which a girl's health is wrecked, but it is difficult to say that early sexual intercourse is the only operative cause. The injury sustained by such intercourse cannot be so immediate as to cause the casual observer to notice the relation of cause and effect. There is no doubt that early marriage with its attendant household worry and lack of cheerful surroundings has a great effect on the constitution of the girl even apart from any damage done by premature sexual intercourse.
12. I cannot be responsible except perhaps in an indirect way as suggested in the answer to question 11.
13. There has been no public opinion.
14. No.

15. Difficulties have arisen as parents cannot generally produce reliable proof of age. Age is mostly determined on medical opinions in cases under Section 363. The age is practically never in question in cases under Section 376. I suggest no measures. I think with the improvement in recording births and deaths in rural tracts, the difficulty in proving age will gradually disappear.

16. This will have no material effect in reducing the margin of error.

17. I think the present provisions are quite suitable. It is not necessary to separate marital offences into a distinct class.

18. The same procedure can be applied to both classes of cases.

19. No.

20. I think penal legislation will be more effective as the offenders can be brought to book earlier than if premature marriages were declared illegal. In the latter case the question may come up before the courts only when the married couple die and their estate is to be distributed among the heirs. I do not think public opinion would have any decided preference for either method.

21. I think the penal law should be strengthened to secure the object in view. Social reform will not proceed fast enough unless the law also declares itself on its side. Legislation should give effect to the views of the more enlightened among the people, so as to compel progress by those who are backward. I concede that such legislation has to be very cautious, but nevertheless the purpose should be kept steadily in view and such advances made from time to time as the state of society justifies.

**Written Statement, dated the 7th August 1928, of Mr. U. SEIN YO, A.T.M., Deputy Commissioner, Kyaukse.**

1. Yes. At the age of 14 the girls physique is not properly developed and the brain is not sufficiently developed as to discriminate what is right and wrong. The girls generally develop the sexual instinct at the age of 16 without being influenced or excited by boys.

2. (i) At the age of 14 the physical or mental states are not sufficiently developed and are generally not in a position to know the consequences of sexual intercourse.

(ii) The Age of Consent for a girl should be 16 and boy 18. At these ages their physical and sexual organs are practically sufficiently developed and are in a position to know the consequences of sexual intercourse and are capable of undertaking their responsibilities in life.

3. Yes. The raising the age to 14 has not prevented nor reduced the number of cases of rape outside the marital state. The boys must be made to understand the seriousness of the offence of committing rape. As far as I know the boys and young men are not aware of it.

4. In this part of the country, girls under 13 are not married at all.

(i)—(iii) Not applicable.

5. About 14 years generally, but it varies between 13 and 15 years in all classes of people here.

6. Unknown. These cases do not come to Court unless they are cases of rape in extra-marital state.

7. Not applicable to Burma. This applies to India when early consummation with religious injunction with regard to certain classes of people only.

8. This practice does not exist in Burma.

9. The mere attainment of puberty is not sufficient indication of physical maturity but it only indicates the beginning of the sexual organs to maturity, generally 2 years after puberty, i.e., at the age 16 both the physical constitu-

tion and the sexual organs may be considered to be sufficiently developed to justify consummation without any injury to her health or her progeny. In some cases girls of 15 years are more than sufficiently developed than those of 16 years. Therefore in some cases it is a mistake to entirely rely on age, but should take the general development into consideration.

10. At the age of 16 years.

11. None has come to my notice except cases of rape. The rape has been committed on girls of any age above 10 years.

12. This does not apply to Burma. The high maternal and infantile mortality is due to poverty and insanitary condition, illiteracy and chiefly due to ignorance of the Burmese midwives.

13. Not applicable to Burma.

14. No. Unless the poor mothers are tempted with large sums of money due to their poverty.

15. Difficulties are experienced in determining the age of girls in some cases due to their under-development in some cases to over-development in others. The general configuration and development should be taken into consideration along with other vital signs generally laid down for determining the age.

16. Raising the age to 14 would not help much. But if it is raised to 16, it will minimise the difficulty to a great extent.

17—18. Yes, into different offences as shewn in the extracts from the Code of Criminal Procedure, 1898, Schedule II attached to your letter.

19. There is nothing to suggest at present.

20. High Age of Consent.

21. I rely entirely on the progress of social reform by means of education and social propaganda.

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**Written Statement, dated the 6th August 1928, of Mr. U. BA THIN,  
B.A., K.S.M., Deputy Commissioner, Minbu.**

1. Sections 375, 376, Indian Penal Code as they stand at present are inconsistent with Section 361, Indian Penal Code where a female under 16 years of age is considered to be a minor and her seduction from lawful guardianship amounts to kidnapping under Section 363, Indian Penal Code. According to a Burma Ruling the kidnapping of a minor female whether with or without her consent for the purpose of marriage or illicit intercourse is considered to amount to an offence under Section 366, Indian Penal Code as a Burman Buddhist female cannot contract a legal marriage without the consent of her parents or guardians. (*Vide Ratanlal's Law of Crimes.*)

2. For the reason given above and in order to make the laws of kidnapping and rape consistent I would raise the Age of Consent under Section 375 to "sixteen".

3. Crimes of seduction or rape are fairly frequent in this country but age limits in law have not much bearing on these crimes. I am of opinion that lack of chivalry or respect for the fair sex on the part of men and the consequent inherent weakness on the part of women in the East account for these crimes to a great extent. Social reforms seem to me to be the most effective remedy for these crimes, but I do not doubt that the raising of the Age of Consent by law will go a long way to bring about the needed social reforms gradually.

4. There is no child's marriage in this country.

5. Girls in this country attain puberty at about 14 or 15 years of age. No appreciable difference is observed in different classes of Society.

6. Cohabitation is not common before puberty in any classes of Society,

7. Please see No. 4.

8. No such practice in this country.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I would put down 18 as the minimum age of maturity for consummation of marriage.

10. Above 16 so far as Burma is concerned.

11. Have not come across many instances of the kind as early marriage is not common in this country.

12. I am of opinion that early maternity conduces to high maternal and infantile mortality and also affects physical progress of the people.

13. The Amendment of the law in 1925 has not affected the public opinion in one way or the other and hence there has been no further development.

14. No.

15. Rape of minor girls is not common in this country and such cases are rarely come across with.

16. Raising of the Age of Consent to 16 which more or less coincides with the age of puberty would in my opinion remove the difficulty of determining the age of girls to a considerable extent.

17—19. No opinion as these questions do not concern this country much.

20. So far as Burma is concerned penal legislation fixing a higher Age of Consent for marital cases is more suitable and likely to be more effective but the conditions in India may be such that the latter alternative of fixing the minimum age of marriage will be found more suitable.

21. Please see remarks under paragraph 3.

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**Written Statement, dated the 1st August 1928, of Mr. CHAN HTWAN OUNG, Pleader, Akyab.**

I acknowledge with thanks your letter No. 42-A.C.C., dated Simla, the 22nd July 1928. In reply I should say that the Legislative Reform you speak of is not required for Burma. What ought to be encouraged in India is Female Education, which would not admit of early marriage, either of boys or of girls. There ought to be marriages of well built young men and young women who are both prepared to live modern life under modern conditions. Legislative protection should not be given to Hindu or Mohammedan custom which promotes early marriage and makes marriage the essential part of a woman's life.

2. I have promoted Female Education here from 1891. It has destroyed the Hindu idea of keeping women under control. It is correct to keep a woman under control. It is necessary that she should learn to control herself. It means that the attention has to be drawn to the sense of shame which should guard a young man or a young woman from doing a wrong to one's sense of honor. Their eyes should be trained to meet eye to eye of a young man and young lady without evil eye springing up. This is something which can be done only in a society which the Hindus or the Mohammedans have to create.

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**Written Statement, dated the 9th August 1928, of the President, Pyapon Bar Association.**

Strictly speaking, matters which are sought to be elicited by most of the queries do not concern this country. My association has, nevertheless, endeavoured to afford the Committee as much assistance as possible by

answering those questions also which apply more appropriately to the conditions in India proper, leaving out only those which deal with practices and ceremonies peculiar to India alone.

1. Yes. There is dissatisfaction with the law among the intelligent section of the public.

2. With regard to rape outside the marital state, my association is in favour of making an advance upon the present law, because in its opinion, a girl of the age of 14 is incapable of forming a rational judgment of the consequences likely to follow a surrender of her chastity. It accepts the age of 16 as proposed to be substituted.

With regard to the offence within the marital state it is likewise in favour of an advance as (1) every girl of 13 years of age does not attain puberty, and (2) even if puberty is attained it is undesirable to consummate the marriage at once.

3. Fairly frequent. The amendment of 1925 has not affected my district at all, as the form of crime referred to is committed with respect to girls above 14. My association would therefore raise the age to 16.

5. Generally between 13 and 14 among the labouring classes living in villages, and between 14 and 15 among the towns people.

6. No. The practice is almost unknown in Burma.

9. No. Puberty is doubtless a sign of maturity, but not such maturity as would justify consummation of marriage. Puberty is often hastened by a variety of causes, *e.g.*, by association and environment and mode of life, and is not always a reliable guide. My association would therefore have at least a year thereafter as a margin of safety. It is, however, difficult to fix the exact age at which a girl's physical development may be considered sufficient to justify consummation of marriage without injury to her own health and that of her progeny, the physical constitution and development varying so much. However 15 or 16 perhaps will meet the case.

10. As stated above in answer (2) 16 would be the age at which it may safely be presumed that a girl would be competent to give an intelligent consent. In the first flush of maidenhood it is usually the case that a girl is unable to keep her mental balance.

12. My association is unable to express a definite opinion on this point as maternal and infantile mortality are perhaps due to a plurality of causes. But it believes that early maternity adversely affects the intellectual and physical progress of the people, inasmuch as the greatest progress, intellectual and physical, can only be achieved under conditions of the fullest maturity.

13. There is no public opinion here with respect to this question; but the articulate section of the public is in favour of an extension.

15. Yes. My association would raise the age, as it is easier to determine it when a girl has passed the age of 15.

16. Yes, if the Age of Consent is raised to 15 and 16 respectively.

17. Yes, because in extra-marital cases the element of intelligent consent is all-important, whereas in marital cases it does not play a part. My association accepts the existing penalty prescribed for the former offences, but would reduce the severity of the punishment for the latter to 3 months' simple imprisonment or fine up to Rs. 500. The public disgrace of a trial alone would act as a deterrent, as in these cases we have to deal with self-respecting people.

18. Yes. While retaining the existing procedure laid down for extra-marital cases, my association would propose the following for marital cases:—

(1) that the proposed provisions shown against Section 376-A be accepted with an alteration as to the measure of punishment;

- (2) that the proceedings should be initiated by the District Magistrate after a preliminary judicial enquiry held by himself or by a Magistrate of the first class deputed by him;
- (3) that any person should have the right to move the District Magistrate;
- (4) that the enquiry and the trial be held *in camera*;
- (5) that there should be no right of report of either of the proceedings.

19. The fact that any person can set the law in motion will ensure against collusion to protect the offender, and the fact that a trial is to take place only after a judicial enquiry will safeguard him against improper prosecution or extortion.

20. Legislation fixing the minimum age of marriage would be more effective provided that the penalty prescribed is severe enough to act as a deterrent.

21. My association prefers to rely on the strengthening of the penal law to secure the object in view, as education and social propaganda are very slow in their action.

**Written Statement, dated the 8th August 1928, of Mr. U PO MIN, B.A., E.A.C., Maubin.**

1. There is some dissatisfaction with the state of law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code. In Burma early marriage is not the custom among Burmans. In very rare cases child marriage is countenanced by the Burmese parents. So the Burmese public opinion is against it. In Burma a girl is not considered to be of age for marriage until she attains the age of 16 years.

2. For reasons stated above an advance should in my opinion be made on the present law by substituting the word "Sixteen" for the word "Fourteen" in fifth clause of section 375 of the Indian Penal Code.

3. Crimes of seduction or rape are not frequent in this part of the country.

4. As child-marriage is not the custom among Burmans I am unable to give my views on this question.

5. In Burma girls attain puberty usually at the age of about 13 years. There is no caste system in Burma.

6. Cohabitation is uncommon before the girls attain the age of puberty, soon after puberty or before the girl completes 13 years. There may be rare and few exceptions. I have never come across any of these in Court.

7—8. No such thing in Burma so far I know.

9. No answer.

10. In my opinion a girl of 16 years ordinarily is competent to give an intelligent consent.

11. No. I have never come across such cases in Burma.

12—21. No reply to these questions. And I further would state that as I am a Burman conversant only with Burmese customs I do not think that my oral evidence will be of any use to the other parts of India besides Burma and Burmans.

**Written Statement, dated the 7th August 1928, of the Hon'ble Mr. Justice MAUNG BA, High Court, Rangoon.**

Child marriage is practically unknown among Burmans. In the dharmas that marriageable age is fixed at 15 or 16. Buddhism has nothing to do with marriages. With Burmans marriage is purely a civil contract. Girls

attains puberty at about 13 or 14. No Burmese parents would think of marrying their daughter immediately or soon after puberty. Of course marriage before puberty is never known. Even among poorer classes the marriage of a girl below 16 is rare. The age is higher among educated classes.

Cases of rape on girls under 14 are rare. Rape is present almost in every case of kidnapping. Section 366, Indian Penal Code, affords ample protection to girls under 16. The recent raising of the age from 12 to 14 has not reduced rape cases. On the contrary, such cases have been steadily increasing since 1922 being 304 in that year, 331 in 1923, 387 in 1924, 470 in 1925 and 506 in 1926. Similar increase is noticeable in kidnapping cases. I venture to think that the proposed legislation is not necessary so far as Burmans are concerned.

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**Written Statement, dated the 7th August 1928, of Dr. R. S. GREWAL, I.M.S., Moulmein.**

2. (2) In my opinion an advance on the present Law is essential.

3. Crimes of seduction or rape are very common in this part of the country. The Amendment of Law made in 1925 had no effect. In my opinion the age should be raised to 18 years or at least 16 years. Because the girls below this age are not mentally matured so far Burma is concerned.

5. 14—16 years.

6. (1) Many instances can be picked up.

(b) Yes. It is fairly common.

(c) Same.

9. No. 2—4 years after maturity.

7. No.

10. Sixteen years.

11. No.

12. Yes.

13. Yes, very little in big towns only.

14. No.


15. Yes. I think standard measures of height, weight and chest should be worked out and supplemented to the present knowledge.

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**Written Statement, dated the 10th August 1928, of the Hon'ble Mr. Justice CARR, High Court, Rangoon.**

In reply to your letter No. 42-A. C. C., dated the 23rd July 1928, I have the honour to say that in my opinion the problem of Child Marriage does not arise in a serious form in Burma.

The Indian Communities among which this practice prevails form only a very small proportion of the population of the province. To what extent the practice prevails among them I am unable to say, for it is exceedingly seldom that any case arising out of it comes before the Courts in Burma.

Among the Burmans themselves the marriage of very young girls is rare. I have myself heard of a few cases of marriage of girls at the age of thirteen, but I cannot remember any case of the marriage of a girl under that age. In my opinion there has always been a fairly strong public sentiment against very early marriages and this sentiment is strengthening. In consequence of this I think that during my experience of over 34 years in the province the minimum average age of marriage has risen considerably, though I must admit that I cannot cite concrete instances in support of my opinion. 

In this matter I think so far as concerns the Burmese community no legislation is at present called for, other than such as may be undertaken in the course of the codification of Burmese Buddhist Law, which is at present under consideration. For the rest the matter may safely be left to public opinion and the good sense of the community itself.

As regards other communities I see no reason why they should not be subjected to such legislation as may be found suitable for the same communities in India proper. What that legislation should be is a question on which I can express no opinion I would say, however, that in my opinion Mr. Sarda's Bill, if passed, would be absolutely useless. The penalties imposed by it are so light and its provisions are so hedged about by devices for the protection of offenders from prosecution that it would be effectively a dead letter.

On the question of rape I am not in favour of any raising of the age of consent under section 375 of the Indian Penal Code for the present. The raising of the age to fourteen in 1925 was a very desirable amendment. The time elapsed since its enactment has been too short to permit of any estimation of its effect.

Cases of kidnapping of girls under 16 are not uncommon in Burma but it is comparatively seldom that the girl kidnapped is under 14. To raise the age under section 375, would bring most of these cases under the head of rape. I do not think it is either necessary or desirable to do this; the kidnapping sections of the Penal Code are quite strong enough to enable such cases to be adequately dealt with under the present law.

There are so few of the questions in your questionnaire to which I could reply that I have preferred to give my views in this letter and to leave the questionnaire untouched.

I do not think that any useful purpose would be served by my examination as a witness, but I should be willing, if desired, to give evidence in Rangoon—but not elsewhere.

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**Written Statement, dated the 10th August 1928, of the Hon'ble Sir HENRY SHELDON PRATT, Kt., Judge, High Court, Rangoon.**

1. The answer is in the negative so far as the Burmese and indigenous races of the province are concerned.

2. I see no reason to raise the age of consent.

3. Rape is common in Burma, so is seduction, but cases of rape or seduction of very young girls are not common.

It is too early to gauge the effect of the amendment of the law made in 1925, but I do not think further legislation is at present called for.

4. Amongst the Burmese marriages of girls under 13 are practically unknown and the number under 15 is small.

The Arakanese girls are usually married within a few weeks of obtaining puberty, which is rarely below 13.

So far as the Burmese are concerned no steps appear to be necessary.

As regards the Indian community I agree with Carr, J.'s. opinion that they may fitly come under such legislation as is applied to them in India.

5. About 13 I fancy that this is a subject for medical evidence.

6. As far as the Burmese are concerned the answers are in the negative.

The Arakanese cohabit with their wives at once after marriage, which is usually (at least among the poorer classes) within a few weeks of puberty.

I have had no experience of cases in court.

As to the habits of Indians in Burma I know little.

7—8. Nil.



9. Seems a question for medical witness.

My view is that no girl is fit for marriage before 15 at the very earliest.

I do not think the remaining questions arise in Burma. Public opinion and practice are against very early marriages except in Arakan and there probably things are improving but I have not been stationed there for many years.

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**Written Statement, dated the 10th August 1928, of Mr. U. PO THE, A.T.M., Deputy Commissioner, Amherst, Moulmein.**

1. There has been no dissatisfaction in Burma as far as I know.

2. The age of consent, outside marital state, is now fixed at 14. At this age a girl may be taken to be old enough to know right from wrong and I see no reason why consent given by a girl of this age should not be taken as valid. This is an age at which girls of indigenous races of this country generally attain puberty. Often times they even contract marriage at this age of their own accord. For purposes of sections 375 and 376, Indian Penal Code, I am not in favour of increasing this age limit.

Within the marital state the age limit of the wife may be fixed at 13 as at present and I do not consider any alteration is required or called for.

3. Cases of rape are not frequent in this country as far as I know. Nor are cases of seduction for immoral purposes now, and the amendment of the law in 1925 has had no effect either way on this class of crime.

4. In Burma marriages of girls under 13 among indigenous races are almost unheard of. I have never come across a case in my life. Nor is there a custom to postpone the consummation of marriage, which is usually effected at once. But among Indians it does not seem that child marriage can be prevented or stopped. Even with them the amendment of 1925 appears to have become a dead letter so far. Not a single case of rape by husband on a child wife has been heard of in this country in my service of nearly 30 years.

5. Girls of indigenous races attain puberty between 13 and 15, generally at 14, but Indian girls are said to attain between 12 and 13 years of age.

6. Cohabitation before puberty among indigenous races is never heard of except in rape cases, but there have been cases where girls are given in marriage soon after they attain puberty. These cases are, however, few and far between. There may be cases of cohabitation with girls before they complete 13 years, but such cases are rare and none has ever been brought to Court.

7. No. Our Buddhist religion says nothing on this matter.

8. There is no such ceremony among the indigenous races of Burma.

9. I do in cases of girls of ordinary robust health, but in the interest of the girls' own health and that of her progeny I consider that girls should not be given in marriage before they are 16.

10. Sixteen for girls of indigenous races.

11. No.

12. I do not know whether or not early consummation and early maternity is responsible for high maternal and infantile mortality, but it certainly affects intellectual and physical progress of the people.

13. There never has been public opinion on this point among the indigenous races of this country as far as I am aware.

14. Not among Burmese women, Burmans never as a rule countenance marriage of their children before 18.

15. Not to my knowledge.

16. No.

17. No. At the same time I consider that marital offences should be dealt with more leniently than extra-marital cases. To me it seems that the punishments now provided in section 376 is most suitable both for extra-marital and marital offences.

18. No. The present ordinary procedure relating to trial of warrant cases will do for both I think. But the offence committed by the husband may be made bailable and non-cognizable.

19. I regret I cannot suggest any.

20. The legislation fixing the minimum age of marriage is more likely to be effective than penal legislation fixing the higher age of consent for marital cases.

The former alternative would be more in consonance with public opinion here.

21. I would rely on both.

**Written Statement, dated the 10th August 1928, of Mr. G. HURRY KRISHNA PILLAY, M.B.E., President, Madras Hindu Association, No. 16-B, Barr Street, Rangoon.**

1. There is no dissatisfaction with the state of the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code, except that my association is of the opinion that any offence inter-marital should be punished, if necessary, by a fine and not by imprisonment. My association is of the opinion that ideas in these matters have so far progressed that there will never be any scope for bringing into operation the penal portion of the said sections at all.

2. Public opinion in these matters is very rapidly advancing and my association is of the opinion that left to itself the society will, of its own accord, rapidly bring themselves into line with the rest of the civilized world without any necessity for legislation, penal or otherwise, in social matters.

3. Speaking for the Madras Hindu community resident in Burma, I have to say that among the Madras Hindu community there is very little crime of seduction or rape. In fact, it may be said that this offence is practically non-existent among the Madras Hindu community in Burma. Further, in social matters, the Madras Hindu community in Burma is a little ahead of their co-religionists in the Madras Presidency. The amendment of the law in 1925 cannot claim any credit for the social condition of our community in Burma.

4. Please refer to my answer to question 3.

5. The usual age at which girls attain puberty in Burma may be said to be about 14 in the case of Burmese girls and about 13 in the case of Indian girls: in urban areas and belonging to the higher castes usually attain puberty earlier than girls in rural areas and of the lower castes.

6. Cohabitation before puberty or soon after puberty is practically unknown in Burma, whilst cohabitation before a girl completes 13 years is practically unknown. There are, of course, of and on, a case or two of rape of girls below 13, which do come into Court. These are cases of rape by strangers and are not marital offences at all.

7. So far as the Madras Hindu community is concerned, there is no religious injunction sanctioning the consummation of marriage before or after puberty. The consummation usually takes place about a year after the girl attains puberty and this is usually at the age of 14 or over but never under 14.

8. The "Garbhadan" ceremony is generally not performed by even high caste Hindus in Burma. Where it is performed, it is usually about 18 months or two years after the girl attains puberty.

9. My association considers that the attainment of puberty is by no means a sufficient or any indication of physical maturity. About 18 years could be a reasonable age when a girl may be supposed to have reached sufficient physical development. Ideas in these matters are rapidly advancing and our community does hope that it will not be long before every Hindu considers consummation of marriage of girls below 18 to be barbarous.

10. In India, 16 years would be the minimum age, when a girl may be considered to be competent to give an intelligent consent to cohabitation with a due realisation of consequence.

11. My association has not come across any case in which a girl's health was ruined or prejudicially affected by cohabitation before puberty or shortly after puberty but before full physical development. Such cases might have occurred about twenty years ago, but there have been no such cases at least during the past decade.

12. The answer to this question is "Yes".

13. There has been a rapid development of public opinion in Burma in favour of an extension of age of consent in marital and extra-marital cases; only public opinion is strongly opposed to making any offences inter-marital punishable with imprisonment.

14. The women in our part of the country are opposed to early consummation of marriage for their children.

15. The answer is "No".

16 to 21. My association desires to suggest that growth in social matters must evolve from within and not to be superimposed from outside, more especially by any penal law. My association believes that spread of ideas by means of education and social propaganda would morally, speedily and effectively achieve the object, than by any amount of penal legislation, which might defeat its objects by driving offences underground.

**Written Statement, dated the 11th August 1928, of MAUNG BA SHEIN, A.T.M., Headquarters Assistant, Moulmein.**

1. There has been no dissatisfaction in this district, and as far as I know in other districts.

2. Since the taking away of a girl under 16 years of age out of the keeping of the lawful guardian is an offence under section 363, read with section 361, I am in favour of raising the age of consent to 16 in fifth clause under section 375 Indian Penal Code, but for the reasons given in answer 3 I would retain the law of the age of consent as it is. However, I am of opinion that the age limit of the wife mentioned in section 376, Indian Penal Code, should be raised to 13.

3. Cases of rape are not frequent in this district. Cases of this nature are not such as are committed by criminals. From my experience seduction is committed when the girl gives the man an opportunity and when the man is excited by lust and passion at the moment. In such cases it would be an offence if the girl was under 14 years and not if above. If the age of consent is raised to 16 years, cases which are now no offences would become punishable. This course would in my opinion increase the number of rape cases. In cases of rape the man is generally driven to commit the offence on account of uncontrollable passion and lust and also favourable opportunity given by the girl, and the question of age is never thought of when committing the offence. Advancing the age to 16 would, in my opinion, increase cases of rape.

There has been no cases of seduction of girls for immoral purposes in this district during the last four years or so, i.e., since I came to this district.

4. There has been no case of this nature in this district since I came to this district. I am of opinion that early or child marriage cannot be

stopped amongst the Hindus by Legislation, as the Orthodox Hindus look down upon a father who cannot get a husband for his daughter before she attains puberty, as if he has committed a sin. Prohibiting a man having sexual intercourse with his own wife until she attains 13 years of age will protect the girls against cohabitation with her husband. I am of opinion Exception 1 to Section 375, Indian Penal Code, will be sufficient.

5. Indian girls attain puberty generally between 12 and 13 and Burmese girls and those of other Nationality between 13 and 14 years of age.

6. Cohabitation among the Burmans takes place some time after puberty and there has been no case where this has taken place before, or soon after puberty, and before the girl completes 13 years.

7. There is no Burmese Buddhist injunction for the early consummation of marriages. Among the Burmese Buddhists, parents rarely agree marriages before their daughters attain the age of 18 and never before 16.

8. Gaona or Garbhadan ceremony is not usually performed here and when it is performed it is after the attainment of puberty.

9. I do not consider that the attainment of puberty is a sufficient indication of the physical maturity to justify consummation of marriage. I am of opinion that the earliest age, marriages should be consummated, would be 16 when a girl is considered fully developed at this age.

10. I do not think a Burmese girl would be able to give an intelligent consent to cohabitation before she is 18 with a due realization of consequences. I am unable to give any personal opinion for an Indian girl.

11. I am unable to offer any opinion on this.

12. Early consummation of marriage and early maternity would, I consider, effect the intellectual and physical progress of the people although there may be some isolated cases as an exception.

13. There has been none.

14. Not amongst Burmese women. As stated above Burmese never as a rule counterance marriage of their children before 18 years of age.

15. Burmese people usually keep horoscopes and in some cases birth dates of their children in addition to the report of births being made to the village headmen concerned in the rural area or Birth and Death Registrars in towns. There is therefore no difficulty in this connection. Whenever there is a dispute as to the correctness of a horoscope or birth date or the certificate of the Registrar, there is the medical evidence to fall back on.

16. I do not think so.

17 and 18. I do not think it necessary.

19. I consider the present safeguard sufficient.

20. No. Please see my reasons given in answer 3.

21. I prefer to reply on social reform, promotion of education and social propaganda.

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**Written Statement, dated the 11th August 1928, of U PO KHA,  
A.T.M., Headquarters Assistant, Myaungmya.**

1. So far as I know, there is none. In fact, I think that the law as to the age of consent will be welcome by the public, if it is widely known.

2. In my opinion, a further advance should be made on the present law. My reason is that girls under the age of 16 to 18 are generally ignorant and can be seduced more easily.

3. I should say that these crimes are rather common. The statistics collected by me show that crimes of rape have been increasing. I think that the Act XXIX of 1925, (the amendment of law made in 1925) has succeeded only to some extent in preventing or reducing cases of rape

outside the marital state or the improper seduction of girls for immoral purposes. I would suggest that a further advance be made on the present law.

4. I am not in a position to answer the question as there is no child marriage in Burma as in India.

5. I think the usual age is between 14 and 16.

6. No. Except when the girls are ravished, no cohabitation can be had generally with them before they reach the age of 15 and 16.

7. I would refer you to my answer for question 4.

8. I have never heard of the ceremonies mentioned in this question.

9. No. At the age of not less than 18.

10. If Burma is included in the term "India", I would say that at the age of 20 a girl would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. So far as I remember I have not come across such cases yet. I would refer you to my answer for question 6.

12. I consider so. The issues of married couples, who have not yet fully developed cannot generally be strong. Premature cohabitation is productive of grievous suffering, and permanent injury to children and physical deterioration in the community to which they belong.

13. I do not know of any further development of public opinion in Burma.

14. No. So far as I am aware.

15. Some difficulties have been experienced, but the difficulties can be overcome by the careful examination of the girls' parents and medical officers.

16. I doubt. But for the reasons given by me in my answer for question 2, the age of consent should be raised to over 14.

17. I am not in position to answer the question as there is no marital offences here.

18. I think that there should be some difference in the procedure of trial, but I cannot suggest any. I think that the accused charged with offences within the marital state should be allowed bail.

19. Some safeguards should, I think, be provided. At present I cannot suggest any.

20. Yes. I think that the penal legislation fixing higher age of consent would be in consonance with public opinion in Burma.

21. I would prefer to reply on the strengthening of the penal law to secure the object in view because the mass of people especially females have not yet advanced much in education and also because there are still many uneducated people in Burma.

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**Written Statement, dated the 10th August 1928, of Mr. U PO MAN,  
Additional District and Sessions Judge, Pyapon.**

1. Yes. The people in this country, especially the intelligent section are dissatisfied with the state of the law as to the age of consent contained in sections 375 and 376 of the Indian Penal Code, because they do not generally wish their girls to give up their chastity at an age earlier than 16.

2. In my opinion there can be no circumstances which will justify the retention of the law of the age of consent as it is. There must be an advance made on the present law. Girls in Burma generally attain puberty at the age of 14 and it is not desirable that they should consummate the marriage directly thereafter. They should at least wait for a few years because they are incapable of forming any sensible judgment whether they

should surrender their chastity or not before they reach the age of 16. I would therefore gladly accept the proposed advance, i.e., 16, with regard to rape both within and without marital state.

3. Yes. They are fairly frequent in Burma. The amendment of the law made in 1925 has not so far in my experience been successful in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. To make the law more effective I would suggest that the age of consent be raised to 16.

4. This does not concern Burma at all.

5. As I have remarked above in answer (2) girls in my country attain puberty generally at the age of 14 but it is in the case of poor working classes. Among the higher classes girls attain puberty usually at the age of 15.

6. No. Not common but very rare. I myself have tried a few cases of such nature a few years back as a Magistrate with special powers.

7—8. These practices and ceremonies are practically unknown in our part of the country.

9. No. Not in all cases. It may be so in very rare cases, where the girls are exceptionally well developed in spite of their age. We are to make laws for the good of general public. I have seen many cases where girls after attainment of puberty are physically unfit to consummate marriage. In such cases I am afraid consummation is likely to injure their health and their progeny. As I have already pointed out in answer (2) I think the proper age at which a girl's physical development may be considered enough to justify consummation without injury to her own health and that of her progeny should be at least 16, i.e., one or two years after puberty to be on the safe side.

10. A girl of 16 alone in our country would be competent to give an intelligent consent to cohabitation because before that age she would not in my opinion be able generally to keep her mental balance.

11. Yes. I have come across a few cases as mentioned above in answer (6). I am sorry I cannot now recall to my memory the exact age of the girls concerned but I am almost certain that in one case she was about 9 or 10 and in the other about 13 or 14. So far as I remember in both cases their bodies have been greatly impaired and they were unable to walk for some days. After the trials I have never met the girls and I cannot say whether the rape on them had resulted in injury to their health or prejudicially affected their progeny.

12. I have not much experience in this respect as a Magistrate but I believe that early consummation and early maternity must have something to do with high maternal and infantile mortality because in my opinion girls in this country are not fully matured before they attain the age of 16 in most cases and consummation before such maturity must have adversely affected the intellectual or physical progress of the people.

13. There has been no public agitation here in Burma for the extension of the age of consent in both the cases since the amendment of the law in 1925 but the intelligent public do favour the proposed extension.

14. No. In most cases women of our country would try and prevent such consummation wherever possible. Hence there are many cases of abduction and kidnapping for matrimonial or immoral purposes. Courts in Burma had to try mostly brought by mothers.

15. Yes. There are such difficulties where girls concerned do not wish to submit themselves to medical examination and at the same time do not maintain horoscopes or permanent record of birth dates. Where they do submit to medical examination it is rather hard to determine the age of a girl between 13 and 15. If the age be raised to 16 and if it be made compulsory that girls must be submitted to medical examination, I think these difficulties would be obviated.

16. Yes, if the age of consent be raised to 16.

17. Yes. There is no necessity I think to make any change in the existing nature and amount of maximum punishment prescribed for extra-marital offences. But for marital offences the punishment should be light in cases where the wife is not under 14 and should not exceed (6) six months' simple imprisonment or a fine of Rs. 500 but in cases where the wife is under 14, I would accept the punishment prescribed in proposed section 376-A, owing to presence of brutality in it.

18. Yes. If 2 offences are made into different offences, the procedure of trials should also be made different. I think there needs no change in the existing procedure regarding the trial of extra-marital offences but in the case of marital offences the proceedings should only be initiated by the District Magistrate after preliminary enquiry either by himself or by a 1st Class Magistrate whom he deposes for the purpose. Save above the rest of the procedure should be the same as in the trial of extra-marital offences. Some may suggest to conduct such cases in camera. Enquiry may be held in camera but not the trial for trial in camera is not likely to have adverse effect on the general public and in consequence offences will not be reduced or minimised.

19. The procedure suggested above will I think safeguard the offender against collusion or against improper prosecution or extortion.

20. Yes. The former alternative.

21. I would prefer the former for the progress of social reform is rather too slow in this country.

**Written Statement, dated the 17th August 1928, of the Vice-President,  
Pegu Municipality.**

1. The educated classes are in favour of raising the Age of Consent to sixteen years.

2. People are becoming sufficiently conscious of the evils of early Age of Consent—so it is desirable an advance on the present law be made. The opposition if any—to such a change will not be so strong as a few years back.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has been somewhat effective in protecting married girls against cohabitation with husbands within the prescribed age limit by stimulating public opinion in that direction.

5. The usual age at which girls attain puberty in this part of the country is 14 to 15.

6. (1) No.

(2) Yes.

(3) No, some cases under (3) come to court.

7. No injunction.

8. Not very common here.

9. Attainment of puberty is only the beginning of sexual and reproductive period in girls, so at that crucial period the organs are not mature enough to bear the strain of consummation of marriage. At about 4 years after puberty a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. A girl would be competent to give an intelligent consent if she is between sixteen and eighteen years of age.

12. Yes; maternal immaturity and heredity are responsible for these consequences.

13. In all classes public opinion is in favour of extension of the Age of Consent.

14. No.

15. In some cases there is difficulty in determining the age of a girl in connection with offences under Sections 375 and 376 as they stand at present. The examination of a girl in such cases is based on objective symptoms and as the physical growth and developments are not the same in all girls at the early age of 13 or 14 years—such examinations are not always conclusive.

16. This margin of error won't be much reduced if the age be raised to 14 but raising the age to 16 will practically eliminate all difficulties.

17. Marital and extra-marital offences should entail the same punishment—because if we admit that early consummation is injurious to the health of the girl—than marital cases are doing more harm than extra-marital cases which are very few in number.

20. Fixing the minimum age of marriage will be more effective—because many cases of consummation before legal Age of Consent are apt to be suppressed but marriage being an open function—such cases as happen before the legal age are less likely to be so suppressed.

21. To secure the object in view—we should rely more on penal law than on education and reforms because the latter process will take a much longer course. But at the same time social reform by education should not be ignored.

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**Written Statement, dated the 11th August 1928, of Mr. MG. PO MYIN (2), E.A.C., and Headquarters Assistant, Toungoo.**

1. There is no dissatisfaction with the state of law as to the Age of Consent as amended by Act XXIX of 1925.

2. As the girls of Burmese descent attain puberty between the ages of 13 and 14 I would recommend the retention of the law of consent as it is.

3. Crimes of seduction or rape are not uncommon in this district. The amendment of the law made in 1925 reduced the number of cases of rape and improper seduction of girls for immoral purposes.

4. No remarks as it relates exclusively to Hindu people in respect of whom I have no experience.

5. Burmese girls attain puberty between the ages of 13 and 14. I have no experience in regard to other castes, communities and classes of society.

6. (1) and (3) Cohabitation is not common in this district amongst any class of people before puberty and before the girl completes 13 years.

(2) Cohabitation is common in this district amongst Indians soon after puberty.

7—8. No remarks as it relates exclusively to Hindus.

9. I do not consider the attainment of puberty to be a sufficient indication of physical maturity to justify consummation of marriage, because Burmese girls do not develop physically and mentally up till the age of 16, i.e., about 2 or 3 years after puberty. Then only at the age of 16 they are in my opinion fit to be married without injury to their health and that of their progeny.

10. A Burmese girl is in my opinion competent to give an intelligent consent at the age of 16 to cohabitation with due realization of consequences.

11. I have no experience of such cases.

12. I have no remarks to make.

13. The Burmans appear to have been satisfied with the amendment made in 1925.

14. No. Burmese women are generally given in marriage not less than 4 or 5 years after puberty.

15. Some difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376 I. P. C. Doctors can give their opinion only as to the approximate age after medical



examination. They are not positive. Horoscopes and Yetchokes (pieces of bamboo or other materials on which birth date is noted) are usually produced to prove the age. They are not considered to be conclusive proof even though they are produced from proper authority, i.e., person in whose custody they are preserved. Evidence of the makers has to be taken. Sometimes the makers are found to be dead. Again person born at the same time with the girl and her parents are called as witnesses. I would suggest that Horoscopes and the evidence as to the person born at the same time with the girl may be admitted as conclusive evidence of the age if the horoscopes are produced from proper authority and the latter evidence is satisfactory.

16. No difference.

17—19. No remarks to make.

20. No difference, one way or the other.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda.

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**Written Statement, dated the 12th August 1928, of Mr. U BA TUN, E.A.C., 18, Lower Kemendine Road, Kemendine, Rangoon.**

1. There is no dissatisfaction with the state of the law as to the Age of Consent that I know of in this part of the country, now.

2. I do not think that it is very material whether the law of the Age of Consent is retained as it is or whether an advance is made on the present law, so far as Burmese opinion is concerned, as early marriage is not common in Burma, except amongst the Arakanese and the Mahomedan and Hindu communities residing in Burma and as co-habitation before a girl has attained puberty is not encouraged by the Burmese people. Rapes in Burma are not only confined to undeveloped girls but are also committed on elderly women.

3. Crimes of seduction and rape are frequent in the part of the country where I was last stationed, that is, Mergui District, Burma.

The amendment of the law of 1925 raising the Age of Consent to 14 years has not succeeded in preventing or reducing cases of rape outside the marital state or the seduction of girls.

Such cases occur mostly amongst the illiterate and labouring classes. In order to make the law most effective, I think that education should be more freely imparted to these people. I doubt much if the rural people know the imports of Sections 375 and 376 I. P. C.

4. Such cases are not within my experience.

5. The usual age at which girls attain puberty in this part of the country is between 12 and 14 years. It does not differ in different communities. Those who have a healthy constitution attain puberty at 12 years and those who have a weak constitution at 13 or 14 years. In some exceptional cases girls do not menstruate until they are over 18 years.

6. Cohabitation is not common in this part of the country amongst the Burmese population before puberty, soon after puberty or before the girl completes 13 years. Two cases came up before the Court of the Special Power Magistrate, Mergui, Burma, while I was stationed at Mergui, Burma, in which girls under 12 years of age were raped. I do not remember the number of the cases, but they can be traced at Mergui.

7. The practice of the early consummation of marriage in Burma is restricted to the Hindus, Mahomedans and the Arakanese of Burma. I cannot answer for the Hindus and Mahomedans. As regards the Arakanese, who are mostly Buddhists, the early consummation of marriage is not due to religious injunction.

8. This is unknown to me.

9. Personally I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I do not think that a girl should marry until she is 18 years of age, though one with a strong constitution may marry after she is 16 years.

10. Say between 16 and 18 years.

11. The girls in the two cases mentioned by me in answer 6, who appeared before me, have not been seen by me after their cases were over and I am unable to say how they are now.

12. I think that to some extent high maternal and infantile mortality might be due to early consummation of marriage and early maternity.

13. I do not know what the public opinion amongst the Hindus and Mahomedans are, but as far as the Burmese community are concerned public opinion does not seem to sway one way or the other.

14. Women in this part of the country do not favour early consummation of marriage,—not until the girl is, in their opinion, of a mature age.

15. As far as my experience goes, no question of age arose in the rape cases that appeared before me. The question of age arose only in cases under Sections 363 and 366 I. P. C. where it had to be decided whether the girls were over or under 16 years of age. In some of these cases, the Medical evidence is the only one available. Sometimes the Medical Officer cannot definitely say whether a girl was under or over 16 years of age.

If the registration of births are strictly insisted upon and if the registers of births are permanently kept in the District Office and not at the house of the village headman as they are now kept, after completion, there would be no difficulty in ascertaining the age of any girl.

16. The suggestion in Mergui, Burma, second paragraph of the answer to 15 would materially reduced or minimise the error in determining the age of a girl and not by merely raising the Age of Consent to 14 years or above.

17. Personally I think that extra-marital and marital offences are the same and should be similarly treated and similar punishment should be prescribed.

18. Same answer as above.

9. I have no suggestion to offer.

20. I think that legislation fixing the minimum age of marriage would be more effective. People in this part of the country do not want their daughters to enter into the bonds of matrimony until they are ripe of age.

21. I would rather prefer to rely on the progress of social reform by means of education, and social propaganda.

**Written Statement, dated the 14th August 1926, of Mr. U. SWHE HLA, President, Minbu Municipality, Minbu.**

1. Satisfied.

2. (1) May be retained.

(2) No. Rape cases very seldom in Minbu Town.

4. Yes.

5. 13 years. No difference.

6. (1) No.

(2) Yes.

(3) No. Seldom.

7—8. No.

9. No. After 2 years.

10. 15 years of age.

11. Early marriage, i.e., even after the girl attains puberty resulted in injury to her health.
12. Yes.
13. Yes. General.
14. Only a small percentage.
15. No.
16. May be raised to 15.
- 17—18. No.
19. Yes.
20. Higher Age of Consent will be effective.
21. Education.

**Written Statement, dated the 16th August 1928, of Mr. U PO, B.C.S.,  
Senior Magistrate, Katha, Upper Burma.**

1. There is no dissatisfaction with the present state of the law as to the Age of Consent because there is no early marriage custom among the Burmese. Illicit intercourse with immature girls is also looked upon as a disgraceful act among Burmans.

2. The circumstances which in my opinion justify making an advance on the present law are as follows:—

A girl just over 13 years of age is physically unfit to be a wife or a mother. Early cohabitation is detrimental to the health of the married couple and is responsible for the high death rate among children. By premature cohabitation the husband as well as the wife suffers in their education and they are burdened with the duties of married life before they are well prepared to earn their means of livelihood. In this country girls attain their puberty at the age of 13 but has not attained sufficient physical development at this age for marriage.

3. Crime of rape is frequent in this part of the country and seduction exists though it does not occur frequently. It cannot be said that the amendment of law raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. No case has ever reached the Court under the Amendment Act and I consider that the amended law is not well known to the people yet and not even by some of members of the subordinate Police staff. To make the law effective I think due publicity of the amended law should be given to the public.

4. I cannot answer this question. Among Burmans marriage of girls below 13 is unknown.

5. In this part of the country girls attain puberty at the age of 13. Girls brought up in towns attain their puberty quicker than those living in villages but the difference is only a matter of some months.

6. Cohabitation of girls before or soon after puberty or before they complete 13 years is not common and such cases have never come to court.

7. I cannot answer this question. Buddhism does not say anything about the age for marriage.

8. I cannot answer this question.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage because girls are not well developed until a few years after they have attained puberty. A robust and healthy girl may be fit for marriage 2 years after the puberty but a delicate and unhealthy girl may not be fit until 3 years after.

10. In the matter of marriage girls are guided by the advice of their parents though of course in Burma they sometimes make their own choice for husbands and obtain the consent of parents subsequently. But such

choice cannot be said to be done with a due realization of consequences. I think therefore that a girl cannot give intelligent consent until she has reached 16 or 17 years of age.

11. I have no experience. But I have come across a case in which a girl of 13 years and some months received injuries as the result of rape committed by a boy of 15. The girl has not however attained puberty.

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**Written Statement, dated the 23rd August 1928, of Mr. U THA HNYIN, B.A., K.S.M., Barrister, Sessions Judge, Thaton.**

1. I do not think there has been any dissatisfaction with the state of the law relating to the Age of Consent. On the contrary I think the raising of the age from 12 to 14 since 1925 has been a change for the better, and the further proposed advancement to 16 years will be met with universal approval. In recent years cases of seduction and rape have in my opinion decreased appreciably.

2—3. While agreeing with Sir Hari Singh Gour's proposal to increase the Age of Consent from 14 to 16 years, I am inclined to think that although this would undoubtedly afford an increased protection to minor girls it would at the same time very naturally widen the range or increase the limit under which offences of this nature could be brought within the pale of Sections 375 and 376, I. P. C. Strange as it may appear however I am inclined to the view that owing to more deterrent sentences being passed in such cases there has been a decrease in the number of cases after the passing of the Amendment Act in 1925. I am not prepared to go deeply into the matter regarding other causes owing to the limited time given.

4. I have no personal knowledge of this. The practice of child-marriages is not in vogue amongst Burmese races. It is said to be very common amongst Indians.

5. In Burma, I think the usual age of a girl at which she attains puberty is between 13 and 15 years. Speaking of girls of different castes and races I think the India attains puberty before the Burman and the latter before girls of European or mixed European descent.

6. (1—3) Generally, No.

Except perhaps amongst Indians of low caste. I have not come across any case of the above description in the course of my experience as a Judicial Officer.

7. I have no knowledge of this and am not competent to venture an opinion on it.

8. Same as my answer to Question No. 7.

9. No, I do not. Perhaps consummation a year or two after attainment of puberty would give full scope to the development of the physical and intellectual faculties which must in turn benefit posterity.

10. I think 18 years of age.

11. No. I think medical people would be in a better position to answer this. Rape cases which come up before me as a judicial officer are few and far between. What happens to the girl or how she is faring after the conclusion of the trial is a blank book to me.

12. Yes. Amongst the several races included in the term "Burmese" a very great percentage of them are of the cooly cultivating class living a hand to mouth existence. In many cases too, the young mother is the bread winner of the family. To earn a bare pittance she must leave the house and leave the child neglected. The rate of infantile mortality is high for children between the ages of 6 to 8 months and 2 to 3 years.

13. I am unable to say one way or the other. I have not heard or seen from the proceedings and publications of our Provincial Legislative Council anything bearing on this subject.

14. Generally, No. Perhaps the poorer and depressed classes to some extent resort to early marriage through want and poverty.

15. Yes—in cases coming before me on appeal from lower courts one often finds that the benefit of the doubt which the law allows, has often to be given to the accused on the score of the uncertainty of the age of the girl raped. Parents of girls amongst the different races that come under the category of "Burmese" do not as a rule maintain a reliable record of age. The result is that courts have often to rely simply and solely on the medical evidence and medical evidence at its best can only give the probable age with a margin of error. It is true births have to be reported but it is impossible to preserve a piece of paper say for 12 or 14 years and the original reports maintained in the file of the Health Office Department are destroyed by the time it is required as proof of age in a court of law. So far as Burma is concerned these Birth Reports should be preserved permanently or at least for 16 or 17 years.

16. Yes—Undoubtedly so.

No. 17. No. I would like to maintain the "Statu Quo" and leave it to the discretion of Courts to modulate the punishment to be awarded.

18. No. In view of my answer to Question No. 17 in the negative.

19. Collusion between the prosecuting party and the offender often takes the form of dissuading the girl and tutoring her to refuse to submit to medical examination. If this could be prevented by legislation making it penal or compulsory to submit to medical examination, much of the abuses, might be checked in this direction.

20. I think penal legislation fixing higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage, as the former would give rise to less complications than the latter, which would have perhaps far reaching consequences with the alteration in the personal law of the different castes and creeds to be considered.

21. I think strengthening of the penal law would be preferable.

**Written Statement of Rai Saheb P. N. CHOWDHRY, B.A., B.L.,  
M.L.C., President, Municipal Committee, Bassein.**

There are very rare cases of rape upon and cohabitations with girls of under 14 years of age in Burma. Neither marriages are forced upon minors by their parents or guardians. There had been a few stray cases of rape upon minors, but the Police Authority is quite competent to take immediate cognizance of the offences. No special legislation is therefore warranted.

1. No.

2. (2) Because, in Burma, no girl under 16 years of age is given away in marriage.

3. No.

4. There is none for it. But as for no girl marries before 16, the marriage as well as cohabitation may be put off beyond 16.

5. Girls here in Burma attain puberty at 15. There is no appreciable difference between different castes, communities or classes of society in this matter.

6—8. No.

9. No. Three years after puberty I should think, is the proper time for consummation without injury to a girl or to her progeny.

10. At 18.

11. A girl of 16, one year after attainment of puberty, was given away in marriage. In a year she was confined. The midwife had to use her

instruments. The child is always sick and the mother a mere affair of skin over skeleton.

12. There is no doubt about it.

13—14. No.

15. No, Burmese people are very careful about their horoscope and dates of births. Besides, the births are registered in 99 per cent. of cases.

16. It would be better still if the Age of Consent is raised to 16.

17. There is no need for this measure in Burma, for, here a girl marries at 16 or later when consummation is possible.

18. Not necessary.

19. No.

20. Penal Legislation fixing a higher age will be more effective and in consonance with public opinion in Burma.

21. I prefer to rely on the penal law.

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### **Proceedings of the Ordinary General Meeting of the Monywa Municipal Committee, held on the 22nd November 1928,**

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24. Considered letter No. 42 A. C. C., dated the 24th July 1928, from the Secretary, Age of Consent Committee, asking the views of the Committee on the question are appended to the letter. Resolved that instead of replying the questionnaire in detail, the Committee be informed that this Committee is strongly in favour of legislation fixing the age at 16 for girl and at 20 for boys, as the minimum age for consummation of marriages, and that cohabitation below the said ages be made a penal crime.

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With reference to your Circular letter No. 42 A. C. C., dated the 24th July 1928, I have the honour to enclose herewith a copy of resolution of the Municipal Committee together with a note prepared by Dr. M. L. Kundu, M.B., (Cal.), F.R.F.P.S., (Glas.), L.M., (Dub.), Civil Surgeon, Insein for your information.

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### **Written Statment, dated the 23rd November 1928, of Dr. KUNDU, Civil Surgeon, Insein.**

2. The circumstances which justify in making an advance in the present law are,

- (i) Increasing laxity in sexual morals.
- (ii) Precocity of children in sexual knowledge.
- (iii) Considerable deterioration in the health of girl mothers when economic circumstances do not permit them to grow up in the same luxuriant health as before, specially in Urban areas.

3. As a medical man I know that crimes of rape are quite frequent, and many are not reported.

5. Girls of the Burmese race have their puberty between 12 and 15 years. Girls of Indian parentage resident in Burma get it a little earlier very few being delayed to the 15 year Anglo-Indian girls between 13 and 15 years.

6. I have known of many instances in which cohabitation under all the three circumstances mentioned have happened. I do not know if such cases ever comes to the court, unless rape has been committed on an immature girl.

9. I would most emphatically give my opinion as a medical man that attainment of puberty can never be an indication of physical maturity to justify consummation of marriage. A girl in this country do not get sufficient bodily development before the age of 16 years to be fit for a sexual intercourse or to have a progeny.

10. Not before the age of sixteen either in India or Burma.

11. In my 20 years professional experience as a medical man in wide practice, I have come across many instances in which early cohabitation in marital state and early pregnancy with the strain of child bearing has not only injured the health of the girl mothers permanently, but has actually killed them.

These girls are more apt to get pulmonary Tuberculosis and intestinal disorders like chronic colitis after child-birth than grown up girls and women. I have known cases of severe laceration of the perineum when in marital state sexual intercourse by a grown up man has been performed on a girl wife under 13 years of age.

As regards severe injury in cases of rape on premature girls of the age of 10 or 12 I have known quite a number and in my experience two girls died after such rapes of the injuries received.

12. Most decidedly so, and as I have pointed out before, girls in urban area at the age of 12 to 16, have not the same health as their mothers or grand mothers, for many reasons, the least of which is not economic pressure and increased expenditure on luxury and social functions.

16. There are certain physical development from the medical point of view which gives a definite clue to the age of 16, which is easier to fix than that of 14 or 15.

20. I do not think illicit intercourse in marital state with a premature wife will stop unless the minimum age of marriage is fixed. As a medical man I would even clamour that no girls should be married before the age of 16.

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**Extract from the Minutes of Proceedings of the General meeting of the members of the Insein Municipal Committee, held at the Municipal Office, on Saturday, the 10th November 1928.**

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7. Considered the note of Dr. Kundu on the Age of Consent Committee and resolved that the same be accepted and forwarded to the Secretary, Age of Consent Committee.







